



INCREASING PATIENT ACCESS AND ADHERENCE TO PRESCRIPTION DRUGS IN TEXAS

Physician Provision of Prescription Drugs



WATERLOO
RESEARCH & CONSULTING

January 2019



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Introduction

Texas law places significant restrictions on the ability of physicians to provide their patients prescription medications. Giving physicians more flexibility to provide medications would lower patient's and employer's prescription drug costs, be more accessible and convenient for patients and improve patient medication adherence without negatively impacting patient safety.

Prescription medications represent one of the most cost-effective and powerful tools physicians utilize to help improve clinical outcomes and reduce more costly and invasive treatments and hospitalizations. In Texas, for medications requiring a prescription (i.e. not over-the-counter) the patient must generally obtain the medication from a pharmacy. This represents an additional and unnecessary step in the care process, requiring patients to go to a second location to obtain their recommended therapy/medication. It can be inconvenient for the patient and in many cases results in patients failing to receive their medications.

Current Texas Law

Texas is one of the most restrictive states in the country as it relates to the dispensing of prescription drugs by physicians. This prohibition is a barrier to access to care for patients and especially affects patients that seek treatment at a worksite health clinic, direct primary care practice or urgent care center. Currently, Texas law governing physicians allows a physician to provide drugs in very limited circumstances, as outlined below:

- ***Immediate need exception*** - A physician may supply, provide, dispense or distribute to a patient a drug, remedy or other clinical supply necessary to meet the patient's immediate needs. 'Immediate needs' is defined as "the amount of a prescription drug needed for the proper treatment of a patient until access to a pharmacy is possible. 'Immediate needs' shall be considered the amount of medication deemed necessary for a 72-hour period." If the physician supplies or dispenses drugs to meet the immediate need of the patient, the physician must comply with all appropriate labeling and record keeping requirements under state or federal law or shall oversee compliance by persons acting under his or her direction and supervision. A physician who provides, dispenses or distributes drugs to a patient to meet the immediate need may not charge a fee separate from that charged for medical services provided to the patient.

- ***Dispensing in rural areas*** – a physician may maintain a supply of drugs in the physician’s office to be dispensed in the course of treating the physician’s patients and be reimbursed for the cost of supplying those drugs without obtaining a pharmacy license if the physician resides in certain low population areas. Any physician who dispenses drugs under this exception must notify both the Texas State Board of Pharmacy and the Medical Licensing Board. The physician may continue dispensing the drugs in the area until the Texas State Board of Pharmacy determines, after notice and hearing, that the physician no longer practices in a rural area as described in § 158.003(b).

Additionally, physicians in Texas are permitted to provide samples that have been provided by a pharmaceutical manufacturer and prescription drugs to indigent patients that have been provided by a pharmaceutical manufacturer for an indigent pharmaceutical program.¹

Benefits of Physician Provision of Prescription Drugs

Allowing physicians to provide commonly prescribed medications can save patients and employers money. The cash price for many commonly prescribed drugs can be significantly lower than your insurance co-pay. Cash prices vary dramatically from one pharmacy to another. And if you use your health insurance, prescription drugs can cost much more than the cash price after middlemen like pharmacy benefit managers take their cut.

Physicians in other states can purchase commonly prescribed medications directly from drug wholesalers and offer them to patients for steeply discounted prices.

In the case of workplace clinics, allowing physicians to provide medications can reduce absenteeism and the amount of time that employees miss work. Combined with other pharmacy purchasing strategies, case studies have shown physician dispensing can lead to significant decreases in employer prescription drug spending.

¹ Texas Occupations Code, Title 3. Health Professions, Subtitle B. Physicians, Chapter 158. Authority of Physician to Provide Certain Drugs and Supplies. Available: <https://statutes.capitol.texas.gov/Docs/OC/htm/OC.158.htm>. Accessed: October 25, 2018.

The table below shows cash prices and PPO costs based on a phone survey of retailers and Aetna. The wholesale price is based on the costs available to a solo family physician and does not include any dispensing fee or mark-up a physician might charge.

	Wholesale	Cash price				PPO Cost
	Andameds	People's Pharmacy	CVS	Walmart	GoodRx discount card	Aetna PPO
Lisinopril 20mg #30	\$1.81	\$32.95	\$14.09	\$4	\$4–9.99	\$10.76
Atorvastatin 40mg #30	\$5.47	\$29.95	\$135.99	\$30	\$7.84–\$42.75	\$10.76
Azithromycin 250mg #6	\$1.97	\$25.99	\$34.99	\$29.03	\$7.20–\$23.85	\$13.44

Accessibility and Convenience

Allowing physicians to provide commonly prescribed medications can increase patient access and convenience. Patients can get their diagnosis and treatment in one stop instead of two.

Medication Adherence

Allowing physicians to provide commonly prescribed medications can improve patient adherence. A recent study in the Journal of Internal Medicine shows that nearly 1 in 3 new prescriptions are never filled. In addition, studies have shown that almost a third of patients prescribed medications fail to fill them and that dispensing in the physician office can improve medication adherence. When patients don't take their medicine, their chances of getting sicker, having a bad health outcome, and winding up in the emergency department go up significantly.

Experts estimate patient non-adherence to prescribed medications costs the U.S. upwards of \$330 billion each year. But if a physician could provide a medication before a patient walks out of the door, it could help close the gap in care and ensure the patient has the right medication in their hand.

Policies for Physician Provision of Prescription Drugs from Other States

While many states permit physician dispensing under a broader range of circumstances than Texas does, in most cases there are some additional constraints or requirements implemented

through statute or regulation. The most common policy options for regulating physician dispensing are limitations on the prices that can be charged, amounts that can be dispensed, categories that can be dispensed, or geographic locations from which drugs can be dispensed. In addition, most states that permit physician dispensing include additional oversight or licensing requirements, generally through the state pharmacy board, and some states require patients to be given a written prescription and the option of fulfilling it at a retail pharmacy. While not currently implemented in any states, an additional policy option could be partnerships or supervisory relationships between physicians and pharmacists.

Price Limits

In some cases, policymakers have been concerned that physicians dispensing medications might mark-up the prices of these drugs to the detriment of patients. To address this potential issue, some states place specific limits on how much physicians can charge for the drugs they dispense, generally in the form of a maximum percentage mark-up on the acquisition cost, or prohibit physicians from collecting a dispensing fee.

Amount Limits

In some cases, states have limited the amount of a medication that a physician can dispense. Texas has a limit of this sort, only permitting a physician to dispense an amount necessary to meet the patient's immediate needs. Other states limit the amount of medication that a physician is permitted to dispense to the supply necessary for a certain number of days.

Category Limits

In some states, policymakers have chosen to limit the types of prescription drugs that a physician can dispense. For example, some states do not allow physicians to dispense certain controlled substances.

Geographic Limits

Some states only permit physician dispensing in geographic areas that are underserved by pharmacies. In some cases, these restrictions are tied to the size of the town, while in other cases they are based on the distance to the closest pharmacy.

Oversight

In most of the states that permit physician dispensing, there is a component of oversight by the state pharmacy board. In many cases, the dispensing physician is required to register with, or get licensed by the state pharmacy board, and is subject to statutes and pharmacy board regulations regarding labelling and packaging of prescription drugs, and may be subject to inspections by the pharmacy board.

Pharmacy Involvement

Some states require a dispensing physician to give a patient a written prescription and the option of fulfilling the prescription at a retail pharmacy. While not currently implemented in any state, another possible policy model could involve physicians dispensing medications directly through a partnership with a pharmacist. Such a model could involve delegation of dispensing authority by the pharmacist and then retrospective review of some percentage of dispensing actions. One state does require that the drugs being dispensed by a physician must be packaged by a pharmacy.

Policy Recommendations

While there are multiple ways that Texas law could be amended to permit physicians to provide patients with prescription medications, the most obvious approaches are through amendments to the pharmacy definitions and medical practice acts.

Pharmacy Definition Amendments

Current Texas statute defines several different types of pharmacies, including clinic pharmacies. The definition of clinic pharmacy could be amended to specify that it can include on-site clinics for employee use, or more broadly specify that a clinic pharmacy can dispense specific types of medications.

On-Site Clinic Option

Amend § 560.051(e) to read as follows:

(e) A Class D pharmacy license or clinic pharmacy license authorizes a pharmacy to dispense a limited type of drug or device under a prescription drug order. A Class D

pharmacy specifically includes an on- site industrial clinics for company employee use.

Medication Types Option

Amend § 560.051(e) to read as follows:

(e) A Class D pharmacy license or clinic pharmacy license authorizes a pharmacy to dispense a limited type of drug or device under a prescription drug order including the following categories of drugs: anti-infective drugs, musculoskeletal drugs, vitamins, obstetrical and gynecological drugs and devices, topical drugs, serums, toxoids, and vaccines, drugs for the treatment and/or maintenance of chronic medical conditions (a list can be included), ophthalmic drugs, antihistamines and drugs for treatment of allergies, anti-rejection drugs, blood thinner drugs, breast cancer maintenance drugs, gastrointestinal drugs, mental and behavioral health drugs, memory care medications, smoking cessation drugs, steroid drugs, oral health drugs, and urogenital drugs but specifically excluding controlled substances, Nalbuphine, and drugs used to treat erectile dysfunction. The Board shall not unreasonably deny or delay the issuance of a Class D license based on the formulary provided the formulary does not exceed the categories of drugs listed in this Subsection.

Medical Practice Act Amendments

Alternately, or in addition, the physician dispensing section of the Texas Medical Practice Act could be amended to permit physicians to provide prescription drugs to their patients.

Amend the physician dispensing statute to remove immediate needs language and include course of treatment language but to place restrictions on such dispensing as follows:

Sec. 158.001. PROVISION OF DRUGS AND OTHER SUPPLIES. (a) A physician licensed under this subtitle may supply a patient with any drug, remedy, or clinical supply necessary to meet the patient's immediate needs. This subsection does not permit a physician to operate a retail pharmacy without complying with Chapter 558.

(b) A physician may provide or dispense dangerous drugs to the physician's patients and may be reimbursed for the cost of providing or dispensing the drugs [~~This section does not permit a physician to operate a retail pharmacy~~] without complying with Chapter 558. A physician may not under this subsection provide or dispense a controlled substance listed in Schedules II through V as specified under Chapter 481, Health and Safety Code. In this section, "reimbursement for cost" means an additional charge, separate from that imposed for the physician's professional services, that includes the cost of the drug product and all other actual costs to the physician incidental to providing the dispensing or provision service. The term does not include a separate fee imposed for the act of providing or dispensing the drug itself.

(b-1) A physician who provides or dispenses dangerous drugs under Subsection (b) shall comply with

the notice requirements under Section 158.004 and shall oversee compliance with state and federal laws relating to those dangerous drugs, including applicable labeling, storage, packaging, and recordkeeping provisions.

[...]

Sec. 158.004. REQUIRED NOTICES FOR PHYSICIAN DISPENSING DRUGS. (a) Before providing or dispensing a dangerous drug under Section 158.001(b), the physician must notify the patient that the prescription for the dangerous drug may be filled at a pharmacy. The notification requirement under this subsection may be satisfied by a written notice placed conspicuously in the physician's office or clinic.

(b) A physician who desires to provide or dispense dangerous drugs under Section 158.001(b) shall, not later than the 30th day after the date on which a physician first provides or dispenses dangerous drugs to the physician's patients under Section 158.001(b), notify both the Texas State Board of Pharmacy and the board. The Texas State Board of Pharmacy and the board shall jointly adopt a form by which a physician may provide the notice required under this subsection.

(c) The board by rule shall allow a physician to indicate the physician's continued desire to provide or dispense dangerous drugs under Section 158.001(b) on the

physician's registration permit renewal application
under Section 156.001.

If pursuing this approach, other conforming changes should also be made to the Medical Practice Act and Pharmacy Practice Act and corresponding changes could be made to provisions governing delegation of authority.

Conclusion

Texas law significantly curtails the ability of physicians to provide patients commonly prescribed medications. The vast majority of other states permit a wider range of physician dispensing than is currently permitted in Texas and the practice has not led to any identifiable negative patient outcomes. Allowing physicians to provide medications would give patients additional choice, increase opportunities for medication adherence, reduce cost and create opportunities for full-service worksite clinics to improve employee productivity.

Appendix A – Physician Dispensing Policies

State	Physician dispensing permitted	Price limits	Amount limits	Category limits	Oversight	Geographic location limits	Pharmacy involvement
Alabama	Yes	Yes	No	No	No	No	No
Alaska	Yes	No	No	No	No	No	No
Arizona	Yes	No	No	No	No	No	No
Arkansas	Yes	Yes	No	No	Yes	No	No
California	Yes	No	No	No	No	No	No
Colorado	Yes	No	No	No	No	No	No
Connecticut	Yes	No	No	No	No	No	No
Delaware	Yes	Yes	Yes	Yes	No	No	No
Florida	Yes	No	No	Yes	No	No	No
Georgia	Yes	No	No	No	No	No	No
Hawaii	Yes	No	No	No	No	No	No
Idaho	Yes	Yes	No	No	No	No	No
Illinois	Yes	No	No	No	No	No	No
Indiana	Yes	No	Yes	No	No	No	No
Iowa	Yes	No	No	No	No	No	No
Kansas	Yes	No	No	No	No	No	No
Kentucky	Yes	Yes	Yes	Yes	No	No	No
Louisiana	Yes	No	Yes	Yes	No	No	No
Maine	Yes	No	No	No	No	No	No
Maryland	Yes	No	No	No	No	No	No
Massachusetts	No	Yes	Yes	Yes	No	No	No
Michigan	Yes	No	No	No	No	No	No
Minnesota	Yes	No	No	No	No	No	No
Mississippi	Yes	Yes	No	No	No	No	No
Missouri	Yes	No	No	No	No	No	No
Montana	No	Yes	Yes	Yes	No	Yes	No
Nebraska	Yes	No	No	No	No	No	No
Nevada	Yes	No	Yes	Yes	No	No	No
New Hampshire	Yes	No	No	No	No	No	No
New Jersey	Yes	No	Yes	No	No	No	No
New Mexico	Yes	Yes	Yes	No	No	No	No
New York	Yes	No	Yes	No	No	No	No
North Carolina	Yes	No	Yes	Yes	No	No	No
North Dakota	Yes	No	No	No	No	No	No
Ohio	Yes	Yes	Yes	Yes	Yes	No	No

State	Physician dispensing permitted	Price limits	Amount limits	Category limits	Oversight	Geographic location limits	Pharmacy involvement
Oklahoma	Yes	No	No	No	No	No	No
Oregon	Yes	No	Yes	No	No	No	No
Pennsylvania	Yes	No	No	No	No	No	No
Rhode Island	Yes	No	No	Yes	No	No	No
South Carolina	Yes	No	No	No	No	No	No
South Dakota	Yes	No	No	No	No	No	No
Tennessee	Yes	Yes	No	No	No	No	No
Texas	Yes	No	Yes	Yes	Yes	Yes	No
Utah	Yes	No	No	Yes	No	No	Yes
Vermont	Yes	No	No	No	No	No	No
Virginia	Yes	No	No	Yes	Yes	No	No
Washington	Yes	Yes	No	Yes	No	No	No
West Virginia	Yes	Yes	No	Yes	Yes	No	No
Wisconsin	Yes	Yes	No	No	No	No	No
Wyoming	Yes	No	No	No	No	No	No

Note: In some cases, states are coded as ‘No’ in the ‘physician dispensing permitted’ column when there is a general prohibition on the practice with narrow exceptions. Each other column captures a range of different policy variations and state policies are coded based on a broad interpretation of each category.

Appendix B – Legal References to State Physician Dispensing Policies

State	Legal References
Alabama	
Alaska	
Arizona	
Arkansas	Arkansas Medical Practices Act & Regulations 17-95-102 http://www.armedicalboard.org/Professionals/pdf/mpa.pdf
California	California Business and Professional Code, Section 4170 – Prior to dispensing to a patient, a prescriber must offer that patient a written prescription, which the patient can then opt to take to a pharmacy. California Business and Professional Code, Section 4184 – Practitioners at non-profit or free clinics may not dispense Schedule II controlled substances. California Health and Safety Code, Section 11158 – Direct dispensations of Schedule II controlled substances are limited to a maximum 72-hour supply.
Colorado	
Connecticut	
Delaware	Delaware Code Annotated, Title 16, Section 4739A – Practitioners may not dispense controlled substances beyond what is medically necessary for 72 hours of treatment.
Florida	Florida Statutes, Annotated, Section 465.0276 – Dispensing practitioners may not dispense controlled substances in Schedules II or III; multiple exceptions apply, including medication samples and post-surgical supplies for no more than a 14-day maximum supply.
Georgia	
Hawaii	
Idaho	
Illinois	
Indiana	
Iowa	
Kansas	
Kentucky	201 Kentucky Administrative Regulations. 9:220 – Physicians may not dispense more than a 48-hour supply of controlled substances in Schedule II or a hydrocodone combination substance in Schedule III, except as part of a narcotic treatment program.
Louisiana	Louisiana Administrative Code, Title 46, Section 650 – Physicians may not dispense controlled substances; exceptions to the dispensing prohibition include dispensation of a single 48-hour supply of a controlled substance and a single 7-day supply of a non-narcotic, non-anorectic Schedule V controlled substance for purposes of assessing a therapeutic response.
Maine	02-392-14 Maine Code of Regulations, Section 2 – Dispensers practicing in rural health clinics are not permitted to dispense Schedule II controlled substances.

State	Legal References
Maryland	Maryland Code of Regulations 10.13.01.04 – Licensees shall dispense to patients only when a pharmacy is not conveniently available to a patient; convenience is determined by the patient.
Massachusetts	Medical Board Rules, Prescribing Practices Policy and Guidelines https://www.mass.gov/files/documents/2016/10/wz/policy-15-05.pdf Physicians may only dispense samples.
Michigan	37-2-104. Dispensing of drugs by medical practitioners unlawful – exceptions https://leg.mt.gov/bills/mca/37/2/37-2-104.htm Physician dispensing not allowed except in very limited circumstances.
Minnesota	
Mississippi	
Missouri	
Montana	
Nebraska	
Nevada	NRS 616C.117 https://www.leg.state.nv.us/NRS/NRS-616C.html Limits the provider of health care to dispense only an initial supply (15 days worth) of a Schedule II or III controlled substance.
New Hampshire	
New Jersey	45:9-22.11. Dispensing of drugs to patient limited; exceptions https://www.njleg.state.nj.us/2014/Bills/PL15/66_.HTM Physician shall not dispense more than a 7-day supply of drugs or medicines to any patient
New Mexico	11.4.7.9 Fees for Health Care Services http://www.workerscomp.state.nm.us/pdf/rules/rule7.pdf For new prescriptions only, health care providers may not dispense more than a 10-day supply.
New York	New York Public Health Code, Section 3331 – No more than a thirty-day supply or, pursuant to regulations of the commissioner enumerating conditions warranting specified greater supplies, no more than a three-month supply of a schedule II, III or IV substance may be dispensed by an authorized practitioner at one time. New York Comprehensive Rules and Regulations Title 10, Section 80.71 – Practitioners can dispense up to a 30-day supply of medication.
North Carolina	NC G.S. 97-26.2 https://www2.ncleg.net/Laws/GeneralStatuteChapters?Chapter=0097 Schedule II and III drugs limited to an initial 5-day supply, commencing upon the employee’s initial treatment following injury
North Dakota	

State	Legal References
Ohio	4123-6-21.1 Payment for outpatient medication by self-insuring employer http://codes.ohio.gov/oac/4123-6-21.1 Payment for covered drugs limited to drugs dispensed by a registered pharmacist.
Oklahoma	
Oregon	OAR 436-009-0090(3) OAR 436-009-0090(4) Physician dispensing limited to a 10-day supply maximum. Must submit a form when prescribing more than a 5-day supply of certain drugs for workers' comp.
Pennsylvania	
Rhode Island	RI Medical Fee Schedule/ Pharmacy Charges Guidelines https://www.risingms.com/services/data-fee-schedules/ri-workers-compensation-medical-fee-schedule/ Reimbursement limited to pharmacies.
South Carolina	
South Dakota	
Tennessee	Tennessee Code Annotated, Section 63-1-313 – No practitioner dispensing is permitted in pain management clinics, except Schedule IV and Schedule V samples up to a 72-hour maximum supply.
Texas	Texas Occupations Code 3-158.001 https://statutes.capitol.texas.gov/Docs/OC/htm/OC.158.htm Limited to dispensing drugs to meet the patient's immediate needs or in rural areas.
Utah	Utah Code Annotated, Section 58-17b-610 – Prescribers are permitted to supply the immediate needs of their patients with controlled substance drug samples that amount to no more than a 30-day supply; dispensing of Schedule II controlled substances, opioids or benzodiazepines are not permitted.
Vermont	VA Code § 54.1-3304.1. Authority to license and Regulate http://lis.virginia.gov/cgi-bin/legp604.exe?151+ful+CHAP0117 Facilities from which practitioners of the healing arts dispense controlled substances must obtain a permit from the Board of Pharmacy, unless one practitioner in the facility is licensed by the Board to sell controlled substances.
Virginia	
Washington	WA Fee scheduled and Payment Policies https://lni.wa.gov/apps/FeeSchedules/Default.asp Repackaged drugs and medication dispensed in physician's office will not be reimbursed. Maximum fees for some covered drugs administered in or dispensed from a prescriber's office are priced based on a percentage of the AWP of the drug.

State	Legal References
West Virginia	West Virginia Code Annotated, Section 16-5H-4 – Practitioners at pain management clinics may not dispense more than a 72-hour supply of a controlled substance.
Wisconsin	
Wyoming	

Note: Only statutes that explicitly address physician provision of prescription drugs are included here. For states without such statutes the ability of physicians to provide prescription drugs to their patients is affected by the interaction between the state’s medical practice act and pharmacy regulations.



100 Congress Ave, Suite 2000

Austin, TX 78701

(512) 657-2569

www.waterlooresearch.com