

By: Eiland

H.B. No. 3355

A BILL TO BE ENTITLED

AN ACT

relating to provider duty for ocular postoperative care.

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

SECTION 1. Chapter 162, Subtitle B, Title 3, Occupations Code is amended by adding Subchapter F to read as follows:

Subchapter F. Ocular Postoperative Care

Sec. 162.251. DEFINITIONS. In this subchapter:

(1) "ophthalmologist" means a physician licensed under Chapter 155 who has completed a residency in ophthalmology in an accredited program;

(2) "therapeutic optometrist" means a person licensed as an therapeutic optometrist under Chapter 351 and authorized to practice therapeutic optometry;

(3) "surgery" has the meaning assigned in Chapter 151, Section 151.002.

Sec. 162.252. POSTOPERATIVE CARE AFTER EYE SURGERY. (a) If a surgeon delegates the responsibility for postoperative care for a patient for whom the surgeon performed eye surgery in this state, the surgeon may do so only by entering into a comanagement agreement with an ophthalmologist or therapeutic optometrist under the provisions of this section.

(b) Except as provided in Subsection (c) of this section, a surgeon who performs eye surgery in this state shall be physically available to the patient for postoperative care in the community in

1 which the operation was performed for at least 120 hours after the  
2 surgery is completed.

3 (c) A surgeon who performs eye surgery in this state may  
4 delegate the responsibility for the first 120 hours of  
5 postoperative care for the patient to another person if the  
6 delegation occurs through a comanagement agreement that meets the  
7 requirements of this section and the person to whom the  
8 responsibility is delegated.

9 (1) is an ophthalmologist; and

10 (2) either

11 (A) holds a license or permit to practice  
12 medicine that was issued under this Subtitle; or

13 (B) is exempt from the requirement to have a  
14 license or permit under this Subtitle by Section 151.052(a)(8),  
15 (9), or (11).

16 (d) In order to satisfy the requirements of this section, a  
17 comanagement agreement for post operative care of a patient must  
18 meet the following requirements:

19 (1) the agreement may be entered into only when

20 (A) the distance the patient would have to travel  
21 to the regular office of the operating surgeon would result in an  
22 unreasonable hardship for the patient, as determined by the  
23 patient;

24 (B) the surgeon will not be available for  
25 postoperative care of the patient as a result of the surgeon's  
26 personal travel, illness, travel to a rural area of the state for  
27 occasional practice of medicine, or travel to an area of the state

1 designated as a physician shortage area by the board; or

2 (C) other justifiable circumstances exist, as  
3 provided under regulations of the board;

4 (2) the agreement may not provide a fee to the person  
5 to whom the care is delegated that does not reflect the fair market  
6 value of the services provided by the person;

7 (3) the agreement may be entered into only if the  
8 surgeon confirms that the person to whom the care is delegated is  
9 qualified to treat the patient during the postoperative period and  
10 is licensed or certified to provide the care if license or  
11 certification is required by law;

12 (4) the agreement may not take effect unless there is a  
13 written statement in the surgeon's file and in the files of the  
14 person to whom postoperative care is being delegated that is signed  
15 by the patient in which the patient states the patient's consent to  
16 the comanagement agreement and in which the patient acknowledges  
17 that the details of the comanagement agreement have been explained  
18 to the extent required under (5) of this subsection;

19 (5) the details of the agreement shall be disclosed to  
20 the patient in writing before surgery is performed; the disclosure  
21 required under this paragraph must include

22 (A) the reason for the delegation;

23 (B) the qualifications, including licensure or  
24 certification, of the person to whom the care is delegated;

25 (C) the financial details about how the surgical  
26 fee will be divided between the surgeon and the person who provides  
27 the postoperative care;

1                   (D) a notice that, notwithstanding the  
2 delegation of care, the patient may receive postoperative care from  
3 the surgeon at the patient's request without the payment of  
4 additional fees;

5                   (E) a statement that the surgeon will be  
6 ultimately responsible for the patient's care until the patient is  
7 postoperatively stable;

8                   (F) a statement that there is no fixed date on  
9 which the patient will be required to return to the referring health  
10 care provider; and

11                   (G) a description of special risks to the patient  
12 that may result from the comanagement agreement.

13           (e) A surgeon may not enter into a comanagement agreement  
14 governed by this section

15                   (1) under which two more or physicians or therapeutic  
16 optometrists agree to comanage patients of the surgeon as a matter  
17 of routine policy rather than on a case- by-case basis;

18                   (2) that is not clinically appropriate for the  
19 patient;

20                   (3) that is made with the intent to induce surgical  
21 referrals; or

22                   (4) that is based on economic considerations affecting  
23 the surgeon.

24           (f) An ophthalmologist or therapeutic optometrist may not  
25 require, as a condition of making referrals to a surgeon, that the  
26 surgeon must enter into a comanagement agreement with the  
27 ophthalmologist or therapeutic optometrist for the postoperative

1 care of the patient who is referred.

2 (g) An ophthalmologist or therapeutic optometrist to whom  
3 postoperative care is delegated under a comanagement agreement  
4 governed by this section may not further delegate the care to  
5 another person, regardless of whether the other person is under the  
6 supervision of the ophthalmologist or therapeutic optometrist.

7 (h) It is an affirmative defense to a prosecution under this  
8 section or in a disciplinary proceeding for violation of this  
9 section that the surgeon delegated postoperative care of a patient  
10 because of unanticipated circumstances that were not reasonably  
11 foreseeable by the surgeon before the surgery was performed.

12 Sec. 162.252. EXEMPTIONS. This Subchapter does not apply  
13 to ocular postoperative care for surgery which is:

14 (1) performed in a residency program accredited by the  
15 Accreditation Council for Graduate Medical Education; and

16 (2) comanaged by a medical resident licensed to  
17 practice medicine under this Subtitle.

18 Sec. 162.253. APPLICATION. This act applies to ocular  
19 surgery performed on or after January 1, 2006.

20 Sec. 162.254. RULES. The board may adopt rules as necessary  
21 to regulate ocular postoperative care in accordance with this  
22 subchapter.

23 SECTION 2. This Act takes effect September 1, 2005.