

BILL ANALYSIS

Senate Research Center
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S.B. 761
By: Nelson
Health & Human Services
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law relating to a report filed by a nurse regarding patient safety and the protections available to nurses who file a report are unconsolidated and are often unclear.

As proposed, S.B. 761 consolidates statutory provisions regarding patient safety reports by a nurse and nurse protection provisions; establishes when a request for a nursing peer review determination is deemed to have been made in good faith; and increases the minimum recovery for nurses who are retaliated against for filing a report or requesting a nursing peer review determination.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Section 301.402, Occupations Code, to read as follows:

Sec. 301.402. MANDATORY REPORT BY NURSE.

SECTION 2. Amends Section 301.402(f), Occupations Code, as follows:

(f) Prohibits a person from suspending or terminating the employment of, or otherwise disciplining or discriminating against, a person who reports, without malice, under this section. Provides that a violation under this subsection is subject to Section 301.413. Deletes existing text regarding to whom a nurse is authorized to report any situation that exposes a patient to substantial risk of harm as a result of a failure to provide patient care that conforms to minimum standards of acceptable and prevailing professional practice or statutory, regulatory, or accreditation standards.

SECTION 3. Amend Subchapter I, Chapter 301, Occupations Code, by adding Section 301.4025, as follows:

Sec. 301.4025. OPTIONAL REPORT BY NURSE. (a) Authorizes a nurse, in a written, signed report to the appropriate licensing board or accrediting body, to report a licensed health care practitioner, agency, or facility that the nurse has reasonable cause to believe has exposed a patient to substantial risk of harm as a result of failing to provide patient care that conforms to the minimum standards of acceptable and prevailing professional practice, for a report made regarding a practitioner; or statutory, regulatory or accreditation standards, for a report made regarding an agency or facility.

(b) Authorizes the nurse to report to the nurse's employer or another entity at which the nurse is authorized to practice any situation that the nurse has reasonable cause to believe exposes a patient to substantial risk of harm as a result of a failure to provide patient care that conforms to minimum standards of acceptable and prevailing professional practice or to statutory, regulatory, or accreditation standards. Provides that for the purpose of this subsection, an employer or entity includes an employee or agent of the employer or entity.

(c) Prohibits a person from suspending or terminating the employment of, or otherwise disciplining or discriminating against, a person who reports, without malice, under this section. Provides that a violation of this subsection is subject to Section 301.413.

SECTION 4. Amends Sections 301.413(a), (b), (c), and (e), Occupations Code, as follows:

(a) Authorizes a person named as a defendant in a civil action or subjected to other retaliatory action as a result of requesting in good faith a nursing peer review determination under Section 303.005 to file a counter claim in the pending action or prove a cause of action in a subsequent suit to recover defense costs, including reasonable attorney's fees and actual and punitive damages, if the suit or retaliatory action is determined to be frivolous, unreasonable, or taken in bad faith.

(b) Prohibits a person from suspending or terminating the employment of, or otherwise disciplining or discriminating against, a person who requests, in good faith, a nursing peer review determination under Section 303.005. Makes conforming changes.

(c) Makes conforming changes. Increases the amount for actual damages that may be recovered from \$1,000 to \$5,000.

(e) Provides that the presumption that a person's employment was suspended or terminated for requesting a peer review committee determination under Section 303.005 is rebuttable, if the request was authorized under Section 303.005 and made in good faith. Makes conforming and nonsubstantive changes.

SECTION 5. Amends Section 303.005, Occupation Code, by adding Subsections (a-1) and (i) and amending Subsection (d), as follows:

(a-1) Provides that a nurse or nurse administrator does not act in good faith in connection with a request made or an action taken by the nurse or nurse administrator if there is not a reasonable factual or legal basis for the request or action.

(d) Requires that when a nurse requests a peer review determination under Subsection (b) and refuses to engage in the requested conduct pending the peer review, the determination of the peer review committee be considered in any decision by the nurse's employer to discipline the nurse for the refusal to engage in the requested conduct. Provides that the determination is not binding if a nurse administrator believes in good faith that the peer review committee has incorrectly determined a nurse's duty. Provides that this subsection does not affect the protections provided by Subsection (c)(1) or Section 301.352.

(i) Prohibits a person from suspending or terminating the employment of, or otherwise disciplining or discriminating against, a nurse who in good faith requests a peer review determination under this section. Provides that a violation of this subsection is subject to Section 301.413.

SECTION 6. Repealer: Section 301.402(c) (relating to a nurse filing a report if the nurse believes there is reasonable cause to believe a practitioner, agency, or facility has exposed a patient to substantial risk of harm due to certain practices), Occupations Code.

SECTION 7. Makes application of this Act prospective.

SECTION 8. Effective date: September 1, 2007.