

BILL ANALYSIS

Senate Research Center

S.B. 993
By: Nelson
Health & Human Services
9/28/2007
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current provisions of the Nursing Practice Act governing reporting of nurses to the Board of Nurse Examiners (board), enacted in 1987, were based on the principle that over-reporting and multiple source reporting to the board promotes patient safety. However, recent studies by the Institute of Medicine show that these reporting methods lead to unreported errors. Current law does not promote sharing of information between nursing peer review committees and other committees within the facility that deal with patient safety and has an overly complex definition of "grounds for reporting."

S.B. 993 changes the definition of "grounds for reporting," changes the requirements for reporting to the board, and requires sharing of information between the nursing peer review committee and other committees within a facility that address patient safety.

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 Section 301.002, Occupations Code, by adding Subdivisions (1-a) and (1-b) to define "chief nursing officer" and "patient safety committee."

SECTION 2. Amends Section 301.303(b), Occupations Code, as follows:

(b) Prohibits the Board of Nurse Examiners (board) from requiring participation in more than a total of 20 hours of continuing education in a two-year licensing period. Deletes existing text prohibiting the board from requiring more than 10 hours of the continuing education to consist of classroom instruction in approved programs. Deletes existing text authorizing the remaining hours of continuing education to consist of any combination of certain instruction.

SECTION 3. Amends Section 301.352, Occupations Code, by amending Subsection (a) and adding Subsections (a-1) and (f), as follows:

(a) Prohibits a person from suspending, terminating, or otherwise disciplining or discriminating against a nurse who refuses to engage in an act or omission as provided by Subsection (a-1).

(a-1) Authorizes a nurse to refuse to engage in an act or omission relating to patient care that would constitute grounds for reporting the nurse to the board under Subchapter I, that constitutes a minor incident, or that violates this chapter or a board rule if the nurse notifies the person at the time of the refusal that the reason for refusing is that act or omission constitutes grounds for reporting the nurse to the board or is a violation of this chapter or board rule.

(f) Provides that a violation of this section is subject to Section 301.413.

SECTION 4. Amends Subchapter H, Chapter 301, Occupations Code, by adding Section 301.355, as follows:

Sec. 301.355. POLICIES APPLICABLE TO NURSES EMPLOYED BY MEDICAL AND DENTAL UNITS. (a) Requires the president of a medical and dental unit, as defined by Section 61.003, Education Code, to determine whether a nurse who is employed by the unit for practice in patient care or in clinical activities is a full-time employee for purposes of certain benefits, leave, or longevity pay.

(b) Provides that a determination under Subsection (a) does not entitle a nurse who works less than 40 hours a week to the full state contribution to the cost of any coverage or benefit. Authorizes the medical and dental unit, from money other than money appropriated from the general revenue fund, to contribute to the cost of any coverage or benefit an amount that exceeds the state contribution.

SECTION 5. Amends the heading to Subchapter I, Chapter 301, Occupations Code, to read as follows:

SUBCHAPTER I. REPORTING VIOLATIONS AND PATIENT CARE CONCERNS

SECTION 6. Amends Section 301.401, Occupations Code, as follows:

Sec. 301.401. New heading: DEFINITIONS. Defines "conduct subject to reporting," "minor incident," "nursing educational program," and "nursing student." Deletes existing text providing for certain grounds for reporting a nurse.

SECTION 7. Amends the heading to Section 301.402, Occupations Code, to read as follows:

Sec. 301.402. MANDATORY REPORT BY NURSE.

SECTION 8. Amends Sections 301.402(b), (e), and (f), Occupations Code, as follows:

(b) Requires a nurse to report to the board in a certain manner if the nurse has reasonable cause to suspect that another nurse has engaged in conduct subject to reporting. Deletes existing text requiring a nurse to report to the board if the nurse has reasonable cause to suspect that another nurse requiring is subject to a ground for reporting under Section 301.401.

(e) Authorizes a nurse to make a report required under Subsection (b)(1) to a nursing peer review committee under Chapter 303 (Nursing Peer Review) instead of reporting to the board under Subsection (b). Makes conforming changes.

(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 of this subsection is subject to Section 301.413. Deletes existing text authorizing a 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. Deletes existing text providing that, for the purposes of this subsection, the employer or entity includes an employee or agent of the employer or entity.

SECTION 9. Amends 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 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 a 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 the statutory, regulatory, or accreditation standards. Provides that, for purposes 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 10. Amends Section 301.403, Occupations Code, as follows:

Sec. 301.403. DUTY OF PEER REVIEW COMMITTEE TO REPORT. (a) Creates this subsection from existing text. Requires a nursing peer review committee operating under Chapter 303 that determines that a nurse has engaged in conduct subject to reporting to file with the board a written and signed report that includes a recommendation whether the board should take formal disciplinary action against the nurse, the basis for the recommendation, and a description of the conduct subject to reporting except as provided by Subsection (b). Deletes existing text providing that a nursing peer review committee is required to file a statement with the board providing a recommendation that includes the extent to which any deficiency in care provided by the nurse was the result of a factor beyond the nurse's control rather than a deficiency in the nurse's judgment, knowledge, training, or skill.

(b) Provides certain circumstances under which a report under Subsection (a) is not required.

SECTION 11. Amends Section 301.404, Occupations Code, as follows:

Sec. 301.404. DUTY OF NURSING EDUCATIONAL PROGRAM TO REPORT. Deletes existing text defining "nursing educational program" and "nursing student."

SECTION 12. Amends Sections 301.405(b), (c), and (e), Occupations Code, as follows:

(b) Requires a person that terminates, suspends for more than seven days, or takes other substantive disciplinary action, as defined by the board, against a nurse, or a substantially equivalent action against a nurse who is a staffing agency nurse, because the nurse engaged in conduct subject to reporting to report certain information in writing to the board. Deletes existing text providing that a ground for reporting under Section 301.401 is a qualification for the reporting of the nurse to the board.

(c) Requires a person who makes a report required under Subsection (b) who is required under Section 303.0015 to establish a nursing peer review committee to submit a copy of the report to the nursing peer review committee. Requires the nursing peer review committee to review the conduct to determine if any deficiency in care by the reported nurse was the result of a factor beyond the nurse's control. Requires a nursing peer review committee that determines that there is reason to believe that the nurse's deficiency in care was the result of a factor beyond the nurse's control to report the conduct to the patient safety committee at the facility where the reported conduct occurred or to the chief nursing officer if the facility does not have a patient safety committee. Deletes existing text requiring each person subject to this section that regularly employs, hires, or otherwise contracts for the services of 10 or more nurses to develop a written plan for identifying and reporting a nurse under Section 301.401(a) except as provided by Subsection (g). Deletes existing text requiring the plan to provide for the review of the nurse and the incident by a nursing peer review committee established and operated under Chapter 303 (Nursing Peer Review). Deletes existing text providing that the

review by the committee is only advisory, but is required, even if the nurse is voluntarily or involuntarily terminated.

(e) Deletes existing text providing that the requirement under Subsection (c) that a nursing peer review committee review the nurse and the incident does not prevent a person from taking disciplinary action before review by the peer review committee is conducted.

SECTION 13. Amends Section 301.407(b), Occupations Code, as follows:

(b) Requires a state agency that has reason to believe that a nurse has engaged in conduct subject to reporting to report the nurse in writing to the board or to a nursing peer review committee under Chapter 303 unless expressly prohibited by state or federal law. Deletes existing text requiring a state agency that has reason to believe a ground for reporting a nurse exists under Section 301.401 to report in writing to the board the identity of that nurse.

SECTION 14. Amends Sections 301.413(a), (b), (c), and (e), Occupations Code, as follows:

(a) Provides that this subsection refers to a report filed as a result of refusing to engage in conduct as authorized by Section 301.352, or as a result of requesting in good faith a nursing peer review determination under Section 303.005.

(b) Prohibits a person from suspending or terminating the employment of, or otherwise disciplining or discriminating against, a person who reports, without malice, under this subchapter or requests, in good faith, a nursing peer review determination under Section 303.005.

(c) Provides that a person who reports under this subchapter, refuses to engage in conduct as authorized by Section 301.352, or requests a nursing peer review determination under Section 303.005 has a cause of action against a person who violates Subsection (b) and is authorized to recover certain damages, including the greater of actual damages or \$5,000, rather than \$1,000.

(e) Provides that it is a rebuttable presumption that the person's employment was suspended or terminated for reporting under this subchapter, for refusing to engage in conduct as authorized by Section 301.352, or for requesting a peer review committee determination under Section 303.005 if certain conditions are met.

SECTION 15. Amends Section 301.457, Occupations Code, by adding Subsection (g), as follows:

(g) Requires the board to report a determination to the patient safety committee at the facility where the nurse's deficiency in care occurred, or if the facility does not have a patient safety committee, to the chief nursing officer if the board determines after investigating a complaint under Subsection (e) that there is reason to believe that a nurse's deficiency in care was the result of a factor beyond the nurse's control.

SECTION 16. Amends Section 303.001, Occupations Code, adding Subdivision (4-a) to define "patient safety committee."

SECTION 17. Amends Chapter 303, Occupations Code, by adding Section 303.0015, as follows:

Sec. 303.0015. REQUIRED ESTABLISHMENT OF NURSING PEER REVIEW COMMITTEE. (a) Requires a person to establish a nursing peer review committee to conduct nursing peer review under this chapter and Chapter 301 for certain purposes.

(b) Authorizes a person required to establish a nursing peer review committee under this section to contract with another entity to conduct the peer review for the person.

SECTION 18. Amends Section 303.005, Occupations Code, by adding Subsections (a-1) and (i) and amending Subsections (b), (d), and (h), as follows:

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

(b) Authorizes a nurse to request, on a form developed or approved by the board, a determination by a nursing peer review committee under this chapter of whether a conduct violates a nurse's duty to a patient if a person who is required to establish a nursing peer review committee under Section 303.0015 requests a nurse to engage in conduct that the nurse believes violates a nurse's duty to a patient. Deletes existing text authorizing a nurse to request, on a form developed or approved by the board, a determination by a nursing peer review committee under this chapter of whether the conduct violates a nurse's duty to a patient if a person who regularly employs, hires, or otherwise contracts for the services of at least 10 nurses requests one of those nurses to engage in conduct that the nurse believes violates a nurse's duty to a patient.

(d) Requires, if 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 to be considered in any decisions by the nurse's employer to discipline the nurse for the refusal to engage in the requested conduct, but 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.

(h) 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 or a person who advises a nurse of the nurse's right to request a determination or of the procedures for requesting a determination. Provides that a violation of this subsection is subject to Section 301.413. Deletes existing text providing that a person is not required to provide a peer review determination under this section for a request made by a registered nurse, unless the person regularly employs, hires, or otherwise contracts for the services of at least five registered nurses.

(i) Requires a person who is required to provide, on request, a nursing peer review committee determination under Subsection (b) to adopt and implement a policy to inform nurses of the right to request a nursing peer review committee determination and the procedure for making a request.

SECTION 19. Amends Chapter 303, Occupations Code, by adding Section 303.0075, as follows:

Sec. 303.0075. SHARING OF INFORMATION. (a) Authorizes a nursing peer review committee and a patient safety committee established by the same entity to share information.

(b) Provides that a record or determination of a patient safety committee, or a communication made to a patient safety committee, is not subject to subpoena or discovery and is not admissible in any civil or administrative proceeding, regardless of whether the information has been provided to a nursing peer review committee. Authorizes the privileges under this subsection to be waived only through a written waiver signed by certain officers of the patient safety committee. Provides that this subsection does not affect the application of Section 303.007 (Disclosure of Information) to a nursing peer review committee.

(c) Requires a committee that receives information from another committee to forward any request to disclose the information to the committee that provided the information.

SECTION 20. Amends Section 303.011, Occupations Code, as follows:

Sec. 303.011. EVALUATION BY COMMITTEE. a) Creates this subsection from existing text.

(b) Requires the nursing peer review committee to report a deficiency in care that the committee determines was the result of a factor beyond the nurse's control to a patient safety committee for evaluation. Requires the patient safety committee to evaluate the influence of the factors on the conduct of the nurse being evaluated and on the practice of other nurses within the entity that established the committee. Requires the committee to report its findings to the nursing peer review committee.

SECTION 21. Repealer: Section 301.303(d) (Application of Sunset Act), Section 301.352(e) (defining "minor incident"), Sections 301.402(a) (defining "nursing educational program" and "nursing student") and (c) (relating to a report made by a nurse regarding patient harm), Sections 301.405(d) (submitting a report by nursing peer committee), (f) (relating to compliance with Subsection (c)), (g) (relating to a written plan), and (h) (relating to participation of peer review), Section 301.419(a) (defining "minor incident"), and Section 303.005(h) (providing a peer review determination), Occupations Code.

SECTION 22. (a) Makes application of this Act prospective.

(b) Provides that the change in law made by this Act by the amendment of Section 301.303(b), Occupations Code, applies only to an application for renewal of a license issued under Chapter 301, Occupations Code, that is submitted on or after the effective date of this Act. Provides that an application for renewal submitted before the effective date of this Act is governed by the law in effect when the application is submitted, and the former law is continued in effect for that purpose.

SECTION 23. Effective date: September 1, 2007.