

## **BILL ANALYSIS**

S.B. 1331  
By: Nelson  
Public Health  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Currently, the Texas Medical Board can recommend that a physician participate in a rehabilitation program if the physician suffers from mental, physical, or substance abuse issues and can refer a physician to treatment and counseling. However, physicians are often apprehensive of self-reporting mental health and substance abuse issues because they fear disciplinary action if they have difficulty combating those mental health and substance abuse issues. Additionally, the board does not have any specialized expertise in dealing with mental health and substance abuse issues, so when a physician has difficulty combating those problems the board is unable to assess whether the difficulties are typical of recovery or resulting more from not participating in the program.

S.B. 1331 establishes a confidential Texas Physician Health Program to address physician mental health and substance abuse issues and encourage physicians and physician assistants to receive treatment for mental health and substance abuse issues before patient safety is compromised. The bill requires the program to be overseen by experts in mental health and substance abuse issues who provide a course of treatment for physicians and monitor their progress through the program.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Medical Board in SECTION 1 of this bill.

### **ANALYSIS**

S.B. 1331 amends the Occupations Code to establish the Texas Physician Health Program to promote physician and physician assistant wellness and the treatment of all health conditions that could potentially compromise the physician's or physician assistant's ability to practice with reasonable skill and safety, including mental health issues, substance abuse issues, and addiction issues. The bill establishes that the program is a confidential, nondisciplinary therapeutic program for physicians and physician assistants and is administratively attached to the Texas Medical Board.

S.B. 1331 requires the Texas Medical Board to appoint a medical director for the program who is required to be a physician licensed by the board, to have expertise in a field of medicine relating to disorders commonly affecting physicians or physician assistants, including substance abuse disorders, and to provide clinical and policy oversight for the program. The bill establishes the governing board of the program and sets forth provisions regarding the appointment and representation of the membership of the governing board. The bill requires the governing board to provide advice and counsel to the medical board and to establish policy and procedures for the operation and administration of the program.

S.B. 1331 requires the governing board to appoint physicians to the Physician Health and Rehabilitation Advisory Committee who have experience in disorders commonly affecting physicians or physician assistants. The bill requires the committee to assist the governing board

by making recommendations on the request of the governing board. The bill requires the medical board, with the advice of and in consultation with the Texas Physician Assistant Board and Texas-based professional associations of physicians and physician assistants, to adopt rules relating to the appointment of members to the governing board and to the committee, including length of terms, procedures for filling a vacancy, and conflict-of-interest provisions. The bill exempts the committee from state law regarding state agency advisory committees.

S.B. 1331 requires the medical board, with the advice of and in consultation with the governing board, committee, and Texas-based professional associations of physicians and physician assistants, to adopt rules and policies as necessary to implement the program, including policies for assessments under the program and guidelines for the validity of a referral to the program; policies and guidelines for initial contacts used to determine if there is a need for a physician or physician assistant to complete a clinically appropriate evaluation or to enter treatment, including policies and guidelines for arrangements for that evaluation or treatment; and policies and guidelines for interventions conducted under the program; and to define applicable guidelines for the management of substance abuse disorders, psychiatric disorders, and physical illnesses and impairments.

S.B. 1331 requires the program to include provisions for continuing care, monitoring, and case management of potentially impairing health conditions, including provisions for cooperation with the evaluating or treating facility; for ongoing monitoring for relapse, including random drug testing, consultations with other physician health and rehabilitation committees, work site monitors, and treating health professionals, including mental health professionals; and for other physician and physician assistant health and rehabilitation programs to operate under an agreement with the program, using established guidelines to ensure uniformity and credibility of services throughout Texas. The bill requires the program to ensure appropriate communications with the medical board, the physician assistant board, other state licensing boards, and physician health and rehabilitation programs. The bill requires the program to use physicians or other health care professional experts or consultants, as appropriate, when necessary to evaluate, recommend solutions for, or resolve a medical dispute.

S.B. 1331 requires the program to accept a self-referral from a physician or physician assistant and referrals from an individual, a physician health and rehabilitation committee, a physician assistant organization, a state physician health program, a hospital or hospital system licensed in Texas, a residency program, the medical board, or the physician assistant board. The bill authorizes a physician or physician assistant to refer the physician or physician assistant to the program. The bill prohibits the program from accepting a referral, except as provided by board rules, for a violation of the standard of care as a result of drugs or alcohol or boundary violations with a patient or a patient's family. The bill authorizes the medical board or the physician assistant board, through an agreed order or after a contested proceeding, to make a referral to and require participation in the program by a specified physician or physician assistant as a prerequisite for issuing or maintaining a license to practice medicine or to practice as a physician assistant in Texas. The bill authorizes the medical board or the physician assistant board to discipline a physician or physician assistant who is required to participate in the program as a prerequisite for issuance or maintenance of a physician's or physician assistant's license and who does not participate in the program. The bill establishes that each program participant is individually responsible for payment of the participant's own medical costs, including any required evaluations, primary treatment, and continuing care.

S.B. 1331 sets forth standard confidentiality provisions regarding documents or information received, gathered, created, or maintained by the program or its employees, consultants, work site monitors, or agents relating to a physician or physician assistant. The bill authorizes the program to report to the medical board or the physician assistant board, as appropriate, the name and pertinent information relating to impairment of a physician or physician assistant. The bill requires the program to make a report to the medical board or the physician assistant board, as appropriate, regarding a physician or physician assistant if the medical director or the governing

board determines that the physician or physician assistant poses a continuing threat to the public welfare. The bill requires such a report, if requested by either board, to include all information in the possession or control of the program.

S.B. 1331 establishes the Texas physician health program account as a special account in the general revenue fund and authorizes funds in the account to be appropriated only to the medical board for administration of the program. The bill requires the board by rule to set and collect reasonable and necessary fees from program participants in amounts sufficient to offset, to the extent reasonably possible, the cost of administering the program. The bill requires each program participant to pay an annual fee to partially offset the cost of participation and monitoring services and requires the board to deposit the fees to the credit of the Texas physician health program account. The bill authorizes the board to grant a waiver to the fee and requires the board to adopt rules relating to the issuance of the waiver. The bill prohibits the board from setting, charging, collecting, receiving, or depositing a fee in excess of \$1,200 annually for a Texas Physician Health Program participant. The bill defines "committee," "governing board," "medical director," "physician assistant board," "program," and "program participant."

S.B. 1331 repeals provisions of the Occupations Code, effective January 1, 2010, relating to the imposition of a nondisciplinary rehabilitation order by the medical board or physician assistant board on an applicant for or holder of a physician or physician assistant license based on that individual's substance abuse issues, mental or physical impairment, or illness that would impair the individual's ability to safely practice medicine or to safely practice as a physician assistant, as applicable; to the effect of such a rehabilitation order; to an independent audit of a rehabilitation order; and to the responsibilities of a private medical association or private association of physician assistants, as applicable, under a rehabilitation order.

S.B. 1331 repeals the following sections of the Occupations Code, effective January 1, 2010:

- Section 164.202
- Section 164.203
- Section 164.204
- Section 164.205
- Section 204.305
- Section 204.306
- Section 204.307
- Section 204.3075

#### **EFFECTIVE DATE**

Except as otherwise provided, September 1, 2009.