

BILL ANALYSIS

C.S.S.B. 1500
By: Duncan
County Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In Texas, the prohibition of the corporate practice of medicine dates back to the early 1900s to curb the unlicensed practice of medicine in response to a concern about unqualified people peddling miracle cures and potions to cure a litany of medical and psychological conditions.

Moreover, as growth in the medical profession developed, many private businesses saw opportunity in the practice of medicine and they began to develop clinics with hired physicians to provide medical care to the public. The medical community had concerns about this growth of corporate clinics and sought legal and legislative prohibitions to these practices. In response to those concerns, many states, including Texas, created requirements that only an individual could be licensed to practice medicine. Courts have consistently interpreted this requirement as a prohibition against the corporate practice of medicine.

Texas is one of only five states that continues to explicitly define or actively enforce some form of the prohibition of the corporate practice of medicine. However, Texas does allow private nonprofit medical schools, school districts, nonprofit health organizations certified by the Texas Medical Board, federally qualified health care centers, and migrant, community, and homeless centers to employ physicians. Additionally, the legislature has allowed approximately 10 hospital districts to change their enabling legislation to employ physicians. The state itself is allowed to employ physicians to work in state academic medical centers, state hospitals, and prisons.

Many smaller Texas communities report that the prohibition against the hiring of physicians is a significant factor contributing to the inability to recruit and retain physicians to serve in those communities. Additionally, in order to meet its statutory mandate and provide care for the needy and indigent population, Parkland Health and Hospital System in Dallas needs to employ approximately 145 primary care physicians for its COPCs, the Dallas County Jail, family health centers, and Parkland Memorial Hospital. When an individual physician is required to establish a sole practitioner office that requires health insurance and retirement benefits, the cost and administrative burden can be a deterrent to agreeing to practice in a small community.

C.S.S.B. 1500 amends current law relating to the employment of physicians by certain hospitals.

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 Subchapter B, Chapter 281, Health and Safety Code, by adding Section 281.0282, as follows:

Sec. 281.0282. DALLAS COUNTY HOSPITAL DISTRICT; EMPLOYMENT OF HEALTH CARE PROVIDERS AND PHYSICIANS. (a) Authorizes the board of hospital managers (board) of the Dallas County Hospital District (district) to appoint, contract for, or employ physicians, dentists, and other health care providers as the board considers necessary for the efficient operation of the district.

- (b) Prohibits the term of an employment contract entered into under this section from exceeding four years.
- (c) Prohibits this section from being construed as authorizing the board to supervise or control the practice of medicine, as prohibited by Subtitle B (Physicians), Title 3 (Health Professions), Occupations Code.
- (d) Requires the authority granted to the board of the district under Subsection (a) to employ physicians to apply only as necessary for the district to fulfill the district's statutory mandate to provide medical and dental care for the indigent and needy residents of the district as provided by Section 281.046 (District Responsibility for Medical Aid and Hospital Care).
- (e) Requires the district to establish a committee consisting of at least five actively practicing physicians who provide care in the district. Requires the committee to approve existing policies or adopt new policies, if no policies exist, to ensure that a physician who is employed by the district is exercising the physician's independent medical judgment in providing care to patients.
- (f) Requires that the chair of the committee be a member of the executive committee of the district's medical staff.
- (g) Requires that the policies adopted and approved by the committee include policies relating to credentialing, quality assurance, utilization review, peer review, medical decision-making, governance of the committee, and due process.
- (h) Requires each member of a committee to provide biennially to the chief medical officer of the district a signed, verified statement indicating that the committee member is licensed by the Texas Medical Board (TMB); will exercise independent medical judgment in all committee matters, including matters relating to credentialing, quality assurance, utilization review, peer review, medical decision-making, and due process; will exercise the committee member's best efforts to ensure compliance with the district's policies that are adopted or established by the committee; and will report immediately to TMB any action or event that the committee member reasonably and in good faith believes constitutes a compromise of the independent medical judgment of a physician in caring for a patient.
- (i) Requires the committee to adopt rules requiring the disclosure of financial conflicts of interest by a committee member.
- (j) Requires each physician employed by the board, for all matters relating to the practice of medicine, to ultimately report to the chief medical officer of the district.

SECTION 2. Amends Chapter 311, Health and Safety Code, by adding Subchapter E, as follows:

SUBCHAPTER E. EMPLOYMENT OF PHYSICIANS BY CERTAIN HOSPITALS

Sec. 311.061. **APPLICABILITY OF SUBCHAPTER.** Provides that this subchapter applies only to a hospital that employs or seeks to employ a physician, has a medical staff of not more than 15 physicians, and is designated as a critical access hospital under the authority of and in compliance with 42 U.S.C. Section 1935i-4 or is a sole community hospital, as that term is defined by 42 U.S.C. Section 1395ww(d)(5)(iii).

Sec. 311.062. **EMPLOYMENT OF PHYSICIAN PERMITTED.** (a) Authorizes a hospital to employ a physician and retain all or part of the professional income generated by the physician for medical services provided at the hospital if the hospital is certified by the Texas Medical Board under Section 162.001(d), Occupations Code, satisfies the

requirements of Subchapter A, Chapter 162, Occupations Code, including Texas Medical Board rules and satisfies the requirements of this subchapter.

(b) States that the requirements of this subchapter or of Subchapter A, Chapter 162, Occupations Code, may not be voided or waived by contract.

Sec. 311.063. HOSPITAL POLICIES. (a) Requires a hospital to adopt, maintain and enforce policies to ensure that a physician employed under this subchapter whose professional income is retained under Section 311.062 exercises independent medical judgment in providing care to patients at the hospital.

(b) Requires that the policies adopted under this section include policies relating to credentialing and privileges; quality assurance; utilization review; peer review; medical decision-making; and due process.

(c) Requires that the policies adopted under this section, including any amendments to the policies, must be approved by the hospital governing board after input from the medical staff as appropriate.

(d) Requires that the policies adopted under this section must include the implementation of a complaint mechanism for processing and resolving complaints regarding interference of attempted interference with the physician's independent medical judgment, and requires that the policies must address the manner in which the public can access board complaint procedures.

(e) Requires that the policies of the hospital must be drafted and interpreted in a manner than reserves to physicians, including physicians employed and physicians not employed by the hospital, the sole authority to engage in the practice of medicine.

Sec. 311.064. CREDENTIALING AND PRIVILEGES. (a) Provides that a physician employed by a hospital under this subchapter is subject to the same standards and procedures regarding credentialing, peer review, quality of care, and privileges as a physician not employed by the hospital.

(b) Requires a hospital to give equal consideration regarding the issuance of credentials and privileges to physicians employed by the hospital and physicians not employed by the hospital.

Sec. 311.065. OTHER HOSPITAL-PHYSICIAN RELATIONSHIPS. Prohibits this subchapter from being construed as altering, voiding, or prohibiting any relationship between a hospital and a physician, including a contract or arrangement with an approved nonprofit health corporation that is certified under Section 162.001(b) (relating to approval and certification of certain health organizations), Occupations Code, and that holds a certificate of authority issued under Chapter 844 (Certification of Certain Nonprofit Health Corporations), Insurance Code.

Sec. 311.066. MEDICAL STAFF BYLAWS. Requires that the medical staff of a hospital may not discriminate against or favor a physician based solely on the physician's employment status with the hospital, including emergency call or charity care obligations.

Sec. 311.067. FAIR PROCESS; PEER REVIEW. (a) Requires that termination of a physician's employment by a hospital is subject to a fair review process.

(b) Requires a hospital that employs physicians to provide peer review and quality assurance through a multi-hospital peer review agreement, an external independent peer review organization, or an internal peer review process approved by the hospital governing board with appropriate input from the medical staff.

Sec. 311.068. RERFERRAL OF PATIENTS. (a) Provides that in this section, “referral” means referral for admissions, diagnostic tests and procedures, surgeries, or other health care services.

(b) Requires that an employment agreement entered into between a physician and a hospital under this subchapter must state that the hospital may not set goals regarding referrals, may not set, as a condition of employment, the volume or number of referrals that must be made and may not set a performance standard based directly or indirectly on the number or volume of referrals.

Sec. 311.069. NONRETALIATION REQUIREMENTS. (a) Provides that a hospital may not terminate, retaliate against, or otherwise penalize a person who reports in good faith to the hospital or the Texas Medical Board a violation or attempted violation of this subchapter, Subchapter A, Chapter 162, Occupations Code or Texas Medical Board Rules.

(b) Provides that a hospital may not prohibit, restrict or otherwise discourage a physician from communicating with the hospital or advocating for a patient regarding medically appropriate health care.

(c) Provides that a physician who makes a report under this section is immune from civil liability for a report made in good faith and may not be disciplined by the Texas Medical Board for any corporate practice of medicine violation related to the reported action, event or policy.

SECTION 3. Amends Section 162.001, Occupations Code by amending Subsection (a) and adding Subsection (d) to read as follows:

Section 162.001. (a)(3) Provides that the board shall certify a health organization that states that health organization has consulted with the organization’s medical staff before filing an application for certification under Subsection (d), if appropriate.

(d) Provides that the board shall certify a health organization to employ physicians licensed by the board if the organization is in compliance with Subchapter E, Chapter 311, Health and Safety Code, and in this subchapter, including board rules.

SECTION 4. Amends Subchapter A, Chapter 162, Occupations Code, by adding Section 162.004, 162.005, 162.006, and 162.007 as follows:

Sec. 162.004. EMPLOYER AND EMPLOYEE REQUIREMENTS. Provides that the following requirements apply to an organization certified under Section 162.001(d) that employs physicians:

(1) the organization shall ensure that each physician retains independent medical judgment in providing care to patients at the organization and may not be penalized for reasonably advocating for patient care;

(2) the organization shall provide a certain portion of medical services free of charge, or at a reduced fee commensurate with a patient's ability to pay;

(3) a physician employed by the organization shall participate in the provision of services under Subdivision (2);

(4) an organization may not include or enforce a non-compete clause in a physician employment contract or condition privileges on the continuation or termination of an employment contract;

(5) a physician who has privileges at the organization and is employed by the hospital and a physician who is not employed by the hospital must be given equal

consideration and treatment in the creation and execution of all medical staff bylaw provisions regardless of the physician's employer.

Sec. 162.005. FEES; ENFORCEMENT. (a) Provides that the board may charge a reasonable fee as necessary for the certification of an organization under Section 162.001(d) and for the investigation, review and enforcement of the organization's compliance with this subchapter and Subchapter E, 311, Health and Safety Code.

(b) Provides that the board may adopt and impose fines and administrative remedies including the revocation of certification under Section 162.003, for a violation of this subchapter or Subchapter E, Chapter 311, Health and Safety Code.

Sec. 162.006. BIENNIAL COMPLIANCE STATEMENT. Provides that when an organization applies for certification, and every two years after that date, an organization seeking certification under Section 162.001(d) shall provide to the board a compliance statement signed by the organization's chief executive officer attesting that the organization is in compliance with all requirements for certification and continued certification, including the requirements of this subchapter and Subchapter E, Chapter 311, Health and Safety Code.

Sec 162.007. DOCUMENTS IN SUPPORT OF CERTIFICATION AND BIENNIAL COMPLIANCE STATEMENT. (a) Provides that the organization shall submit to the board at the time application for certification under Section 162.001(d) is made a copy of the hospital's policies, bylaws, and medical staff bylaws that demonstrate compliance with the requirements of this subchapter and Subchapter E, Chapter 311, Health and Safety Code.

(b) Provides that an organization certified under Section 162.001(d) shall submit to the board as part of the organization's biennial compliance statement copies of any changes or amendments to the hospital's bylaws, policies, and medical staff bylaws that were submitted to the board after the organization's initial approved application for certification.

SECTION 5. Effective date: September 1, 2009.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The committee substitute differs from the original by adding Section 1 that provides that the board of the Dallas County Hospital District may appoint, contract for, or employ physicians, dentists, and other health care providers as the board considers necessary for the efficient operation of the district, and defining the specific terms, conditions and requirements under which they may do so.

The committee substitute also differs by changing the application of the subchapter to certain hospitals, removing the application to hospitals that are located in a population of 50,000 or less and removing language regarding when a hospital may no longer employ a physician based on population changes in the county based on the release of a federal census. The committee substitute requires that the subchapter apply to hospitals that employ not more than 15 physicians.

The committee substitute differs from the original by adding additional conditions under which a hospital may employ physicians, requiring that hospital be certified by the Texas Medical Board under Section 162.001(d), Occupations Code, satisfy the requirements of Subchapter A, Chapter 162, Occupations Code, including Texas Medical Board rules and satisfy the requirements of this subchapter.

The committee substitute differs from the original by requiring that a hospital enforce (in addition to adopt and maintain) policies regarding an employed physician's independent judgment, as well as adding a requirement that the policies must relate to privileging. The

committee substitute also adds language requiring that hospital policies and any amendments to the policies must be approved by the hospital governing board after input from the medical staff as appropriate and requiring the policies of the hospital be drafted and interpreted in a manner that reserves to physicians, including physicians employed and not employed by the hospital, the sole authority to engage in the practice of medicine.

The committee substitute differs from the original by adding language that this subchapter may not be construed as altering, voiding or prohibiting any relationship between a hospital and a physician, including a contract or arrangement with an approved nonprofit health corporation that is certified under Section 162.001(b), Occupations Code and that holds a certificate issued under Chapter 844, Insurance Code.

The committee substitute differs from the original by adding language stating that the medical staff bylaws of a hospital may not discriminate against or favor a physician based solely on the physician's employment status with the hospital, including emergency call or charity care obligations.

The committee substitute differs from the original by adding language stating that termination of a physician's employment by a hospital is subject to a fair review process and that a hospital that employs a physician shall provide peer review and quality assurance through a multi-hospital peer review agreement, an external independent peer review organization or an internal peer review process approved by the hospital governing board with appropriate input from the medical staff.

The committee substitute differs from the original by adding language defining referrals and requiring that a hospital employing physicians under this subchapter not set goals regarding referrals, set as a condition of employment the volume or number of referrals that must be made or set a performance standard based directly or indirectly on the number or volume of referrals.

The committee substitute differs from the original by adding the requirement that a hospital may not terminate, retaliate against or otherwise penalize a person who reports in good faith to the hospital or Texas Medical Board a violation or attempted violation of this subchapter, Subchapter A, Chapter 162, Occupations Code or Texas Medical Board rules. It also adds language that a hospital may not prohibit, restrict or discourage a physician from communicating with the hospital or advocating for a patient regarding medically appropriate health care, and adds language that a physician who makes a report under this section is immune from civil liability and may not be disciplined by the Texas Medical Board for any corporate practice of medicine violation related to the reported action, event or policy.

The committee substitute differs from the original by adding language that the Texas Medical Board shall certify a health organization that states that the health organization has consulted with the organization's medical staff before filing application for certification and shall certify an organization to employ physicians licensed by the board if the organization is compliance with Subchapter E, Chapter 311, Health and Safety Code, this subchapter and board rules.

The committee substitute differs from the original by adding language that the board may charge fees for certification of an organization under Section 162.001(d) for the investigation, review and enforcement of the organization's compliance with this subchapter and Subchapter E, Chapter 311, Health and Safety Code, and that the board may adopt and impose fines and administrative remedies, including the revocation of certification under Section 162.003, for a violation of this subchapter or Subchapter E, Chapter 311, Health and Safety Code.

The committee substitute differs from the original by adding language that when an organization seeks certification and every two years after that date, the organization seeking certification under Section 162.001(d) shall provide to the board a compliance statement signed by the chief executive officer of the organization attesting that the organization is in compliance with all requirements for certification, including the requirements of this subchapter and Subchapter E, Chapter 311, Health and Safety Code. The committee substitute also differs by requiring the organization to include with the application for certification under Section 162.001(d) a copy of the hospital's policies, bylaws and medical staff bylaws that demonstrate compliance with the requirements of this subchapter and Subchapter E, Chapter 311, Health and Safety Code. The

committee substitute also differs by requiring the organization to include with the organization's biennial compliance statement copies of any changes or amendments to the hospital's bylaws, policies and medical staff bylaws that were submitted to the board after the organization's initial approved application for certification.