

By: Duncan

S.B. No. 1500

Substitute the following for S.B. No. 1500:

By: Smith of Harris

C.S.S.B. No. 1500

A BILL TO BE ENTITLED

AN ACT

relating to the employment of physicians by certain hospitals.

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

SECTION 1. Subchapter B, Chapter 281, Health and Safety Code, is amended by adding Section 281.0282 to read as follows:

Sec. 281.0282. DALLAS COUNTY HOSPITAL DISTRICT; EMPLOYMENT OF HEALTH CARE PROVIDERS AND PHYSICIANS. (a) 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.

(b) The term of an employment contract entered into under this section may not exceed four years.

(c) This section may not be construed as authorizing the board of the Dallas County Hospital District to supervise or control the practice of medicine, as prohibited by Subtitle B, Title 3, Occupations Code.

(d) The authority granted to the board of the Dallas County Hospital District under Subsection (a) to employ physicians shall apply only as necessary for the district to fulfill the district's statutory mandate to provide medical care for the indigent and needy residents of the district as provided by Section 281.046.

(e) The Dallas County Hospital District shall establish a committee consisting of at least five actively practicing

1 physicians who provide care in the district. The committee shall  
2 approve existing policies or adopt new policies, if no policies  
3 exist, to ensure that a physician who is employed by the district is  
4 exercising the physician's independent medical judgment in  
5 providing care to patients.

6 (f) The chair of the committee must be a member of the  
7 executive committee of the Dallas County Hospital District's  
8 medical staff.

9 (g) The policies adopted or approved by the committee shall  
10 include policies relating to credentialing, quality assurance,  
11 utilization review, peer review, medical decision-making,  
12 governance of the committee, and due process.

13 (h) Each member of a committee shall provide biennially to  
14 the chief medical officer of the Dallas County Hospital District a  
15 signed, verified statement indicating that the committee member:

16 (1) is licensed by the Texas Medical Board;

17 (2) will exercise independent medical judgment in all  
18 committee matters, including matters relating to credentialing,  
19 quality assurance, utilization review, peer review, medical  
20 decision-making, and due process;

21 (3) will exercise the committee member's best efforts  
22 to ensure compliance with the Dallas County Hospital District's  
23 policies that are adopted or established by the committee; and

24 (4) will report immediately to the Texas Medical Board  
25 any action or event that the committee member reasonably and in good  
26 faith believes constitutes a compromise of the independent medical  
27 judgment of a physician in caring for a patient.

1       (i) The committee shall adopt rules requiring the  
2 disclosure of financial conflicts of interest by a committee  
3 member.

4       (j) For all matters relating to the practice of medicine,  
5 each physician employed by the board shall ultimately report to the  
6 chief medical officer of the Dallas County Hospital District.

7       SECTION 2. Chapter 311, Health and Safety Code, is amended  
8 by adding Subchapter E to read as follows:

9       SUBCHAPTER E. EMPLOYMENT OF PHYSICIANS BY CERTAIN HOSPITALS

10       Sec. 311.061. APPLICABILITY OF SUBCHAPTER. This subchapter  
11 applies only to a hospital that employs or seeks to employ a  
12 physician, has a medical staff of not more than 15 physicians, and:

13           (1) is designated as a critical access hospital under  
14 the authority of and in compliance with 42 U.S.C. Section 1395i-4;  
15 or

16           (2) is a sole community hospital, as that term is  
17 defined by 42 U.S.C. Section 1395ww(d)(5)(D)(iii).

18       Sec. 311.062. EMPLOYMENT OF PHYSICIAN PERMITTED. (a) A  
19 hospital may employ a physician and retain all or part of the  
20 professional income generated by the physician for medical services  
21 provided at the hospital if the hospital:

22           (1) is certified by the Texas Medical Board under  
23 Section 162.001(d), Occupations Code;

24           (2) satisfies the requirements of Subchapter A,  
25 Chapter 162, Occupations Code, including Texas Medical Board rules;  
26 and

27           (3) satisfies the requirements of this subchapter.

1       (b) The requirements of this subchapter and Subchapter A,  
2 Chapter 162, Occupations Code, may not be voided or waived by  
3 contract.

4       Sec. 311.063. HOSPITAL POLICIES. (a) A hospital shall  
5 adopt, maintain, and enforce policies to ensure that a physician  
6 employed under this subchapter whose professional income is  
7 retained under Section 311.062 exercises independent medical  
8 judgment when providing care to patients at the hospital.

9       (b) The policies adopted under this section must include  
10 policies relating to:

- 11           (1) credentialing and privileges;
- 12           (2) quality assurance;
- 13           (3) utilization review;
- 14           (4) peer review;
- 15           (5) medical decision-making; and
- 16           (6) due process.

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

20       (d) The policies adopted under this section must include the  
21 implementation of a complaint mechanism for processing and  
22 resolving complaints regarding interference or attempted  
23 interference with the physician's independent medical judgment.  
24 The policies must address the manner in which the public can access  
25 board complaint procedures.

26       (e) The policies of the hospital must be drafted and  
27 interpreted in a manner that reserves to physicians, including

1 physicians employed and physicians not employed by the hospital,  
2 the sole authority to engage in the practice of medicine.

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

8 (b) A hospital shall give equal consideration regarding the  
9 issuance of credentials and privileges to physicians employed by  
10 the hospital and physicians not employed by the hospital.

11 Sec. 311.065. OTHER HOSPITAL-PHYSICIAN RELATIONSHIPS.  
12 This subchapter may not be construed as altering, voiding, or  
13 prohibiting any relationship between a hospital and a physician,  
14 including a contract or arrangement with an approved nonprofit  
15 health corporation that is certified under Section 162.001(b),  
16 Occupations Code, and that holds a certificate of authority issued  
17 under Chapter 844, Insurance Code.

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

22 Sec. 311.067. FAIR PROCESS; PEER REVIEW. (a) Termination  
23 of a physician's employment by a hospital is subject to a fair  
24 review process.

25 (b) A hospital that employs physicians shall provide peer  
26 review and quality assurance through a multi-hospital peer review  
27 agreement, an external independent peer review organization, or an

1 internal peer review process approved by the hospital governing  
2 board with appropriate input from the medical staff.

3 Sec. 311.068. REFERRAL OF PATIENTS. (a) In this section,  
4 "referral" means referral for admissions, diagnostic tests and  
5 procedures, surgeries, or other health care services.

6 (b) An employment agreement entered into between a  
7 physician and a hospital under this subchapter:

8 (1) must state that the hospital may not set goals  
9 regarding referrals;

10 (2) may not set, as a condition of employment, the  
11 volume or number of referrals that must be made; and

12 (3) may not set a performance standard based directly  
13 or indirectly on the number or volume of referrals.

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

20 (b) A hospital may not prohibit, restrict, or discourage a  
21 physician from communicating with the hospital or advocating for a  
22 patient regarding medically appropriate health care.

23 (c) A physician who makes a report under this section:

24 (1) is immune from civil liability for a report made in  
25 good faith; and

26 (2) may not be disciplined by the Texas Medical Board  
27 for any corporate practice of medicine violation related to the

1 reported action, event, or policy.

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

5 (a) The board by rule shall certify a health organization  
6 that:

7 (1) applies for certification on a form approved by  
8 the board; ~~and~~

9 (2) presents proof satisfactory to the board that the  
10 organization meets the requirements of Subsection (b), ~~or~~ (c), or  
11 (d); and

12 (3) states that the health organization has consulted  
13 with the organization's medical staff before filing an application  
14 for certification under Subsection (d), if appropriate.

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

19 SECTION 4. Subchapter A, Chapter 162, Occupations Code, is  
20 amended by adding Sections 162.004-162.007 to read as follows:

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

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

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

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

6           (4) an organization may not include or enforce a  
7 noncompete clause in a physician employment contract or condition  
8 privileges on the continuation or termination of an employment  
9 contract; and

10           (5) a physician who has privileges at the organization  
11 and is employed by the hospital and a physician who is not employed  
12 by the hospital must be given equal consideration and treatment in  
13 the creation and execution of all medical staff bylaw provisions  
14 regardless of the physician's employer.

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

20           (b) The board may adopt and impose fines and administrative  
21 remedies, including the revocation of certification under Section  
22 162.003, for a violation of this subchapter or Subchapter E,  
23 Chapter 311, Health and Safety Code.

24           Sec. 162.006. BIENNIAL COMPLIANCE STATEMENT. When an  
25 organization applies for certification, and every two years after  
26 that date, an organization seeking certification under Section  
27 162.001(d) shall provide to the board a compliance statement signed



1 by the organization's chief executive officer attesting that the  
2 organization is in compliance with all requirements for  
3 certification and continued certification, including the  
4 requirements of this subchapter and Subchapter E, Chapter 311,  
5 Health and Safety Code.

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

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

19 SECTION 5. This Act takes effect September 1, 2009.