

## **BILL ANALYSIS**

C.S.H.B. 1621  
By: Truitt  
Public Health  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

C.S.H.B. 1621 seeks to codify a recommendation contained in the Public Health Committee's Interim Report to the 82nd Legislature that facilities that use certain imaging equipment be subject to licensing requirements by creating a diagnostic imaging facility license and a fluoroscopy-guided pain management procedure center license.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTIONS 1 and 2 of this bill.

### **ANALYSIS**

C.S.H.B. 1621 amends the Health and Safety Code to create a diagnostic imaging facility license and a fluoroscopy-guided pain management procedure center license. The bill prohibits, effective March 1, 2012, a person from establishing or operating a diagnostic imaging facility or a fluoroscopy-guided pain management procedure center in Texas unless the person holds the proper diagnostic imaging facility license or fluoroscopy-guided pain management procedure center license. The bill requires each separate facility location to have a separate license and specifies that a license issued under its provisions is not transferable or assignable.

C.S.H.B. 1621 exempts the following facilities and offices from diagnostic imaging facility license requirements:

- a licensed convalescent or nursing home;
- a hospital licensed under the Texas Hospital Licensing Law, licensed private mental hospital and other mental health facility, or an outpatient clinic or facility of a hospital that meets the requirements for provider-based status as prescribed by the Centers for Medicare and Medicaid Services;
- an ambulatory surgical center licensed under the Texas Ambulatory Surgical Center Licensing Act;
- a medical or dental school or an outpatient clinic associated with a medical or dental school;
- a health facility, including a hospital, maintained or operated by the state or by a hospital district created under general or special law;
- a clinic or hospital maintained or operated by the United States;
- an office of or clinic owned or operated by a physician licensed under the Medical Practice Act or a dentist licensed under the Dental Practice Act; or
- a diagnostic imaging facility that uses only dental diagnostic technology, which may include cone-beam computed tomography, to obtain images of the maxillofacial region.

The bill exempts the following facilities and offices from fluoroscopy-guided pain management

procedure center license requirements:

- a pain management clinic that is certified under the Medical Practice Act;
- a licensed convalescent or nursing home;
- a hospital licensed under the Texas Hospital Licensing Law, private mental hospital and other mental health facility, or an outpatient clinic or facility of a hospital that meets the requirements for provider-based status as prescribed by the Centers for Medicare and Medicaid Services;
- an ambulatory surgical center licensed under the Texas Ambulatory Surgical Center Licensing Act;
- a medical or dental school or an outpatient clinic associated with a medical or dental school;
- a hospice licensed under statutory provisions relating to home and community support services or as defined by federal law;
- a health facility, including a hospital, maintained or operated by the state or by a hospital district created under general or special law;
- a clinic or hospital maintained or operated by the United States;
- an office of or clinic owned or operated by a physician licensed under the Medical Practice Act or a dentist licensed under the Dental Practice Act; or
- a fluoroscopy-guided pain management procedure center that uses only dental diagnostic technology, which may include cone-beam computed tomography, to obtain images of the maxillofacial region.

C.S.H.B. 1621 establishes licensing application and issuance requirements and provides terms for renewal. The bill requires the executive commissioner of the Health and Human Services Commission to adopt rules necessary to implement the bill's provisions, including rules to address, for each type of facility, requirements for the issuance, renewal, denial, suspension, probation, and revocation of a license to operate a facility; minimum standards for aspects of the operation of the facility that the executive commissioner considers necessary to protect the facility's patients and the public; minimum design standards for the premises of a facility necessary to ensure the health and safety of the facility's patients; the establishment of a quality assurance program for patient care; and, if the facility is owned wholly or partly by a physician or dentist, the provision of a disclosure to the facility's patients of the physician's or dentist's ownership interest in the facility and, at the option of the facility's individual patients, the provision of a list of alternative service providers for the services provided by the facility.

C.S.H.B. 1621 authorizes the executive commissioner, in adopting rules necessary to implement the bill's provisions, to adopt different minimum standards and requirements to reflect the different services provided and the purposes served by each type of facility. The bill requires the executive commissioner, for purposes of regulating fluoroscopy-guided pain management procedure centers, by rule to adopt standards for determining whether a majority of patients at a facility are provided a fluoroscopy-guided pain management service by a pain management provider. The bill specifies that its provisions relating to the adoption of rules by the executive commissioner do not authorize the executive commissioner to establish the qualifications of a licensed practitioner or permit a person to provide health care services who is not authorized to provide those services under another state law. The bill authorizes the Department of State Health Services (DSHS) to inspect a facility at reasonable times as necessary to assure compliance with the bill's provisions and the rules adopted by the executive commissioner. The bill requires DSHS to set fees imposed by the bill's provisions in amounts reasonable and necessary to cover the cost of administering and enforcing those provisions. The bill requires all licensing fees collected under its provisions to be deposited in the state treasury to the credit of the diagnostic imaging and fluoroscopy-guided pain management procedure facility licensing

fund and to be appropriated to DSHS only to administer and enforce the bill's provisions.

C.S.H.B. 1621 establishes grounds for the denial, suspension, or revocation of a license and authorizes DSHS to schedule a facility for probation rather than suspending or revoking the facility's license, if DSHS finds that a facility is in repeated noncompliance with the bill's provisions or rules adopted under the bill's provisions but that the noncompliance does not endanger the public health and safety. The bill requires DSHS to provide notice to the facility of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins and to designate a period of not less than 30 days during which the facility will remain under probation. The bill requires the facility, during the probation period, to correct the items that were in noncompliance and report the corrections to DSHS for approval. The bill authorizes DSHS to suspend or revoke the license of a facility that does not correct items that were in noncompliance or that does not comply with the bill's provisions or the rules adopted under the bill's provisions within the applicable probation period.

C.S.H.B. 1621 authorizes DSHS to issue an emergency order to suspend a license if DSHS has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety and makes an emergency suspension effective immediately on notice to the license holder. The bill requires DSHS, on written request of the license holder, to conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded. The bill specifies that the hearing and any appeal are governed by DSHS rules for a contested case hearing and by the Administrative Procedure Act.

C.S.H.B. 1621 authorizes DSHS to petition a district court for a temporary restraining order to restrain a continuing violation of the bill's provisions or the rules adopted under the bill's provisions if DSHS finds that the violation creates an immediate threat to the health and safety of the patients of a facility. The bill authorizes a district court, on petition of DSHS and on a finding by the court that a person is violating the bill's provisions or the rules adopted under the bill's provisions, by injunction to prohibit the person from continuing the violation, restrain or prevent the establishment or operation of a facility without a license, or grant any other injunctive relief warranted by the facts. The bill requires the attorney general to institute and conduct a suit at the request of DSHS and establishes venue for such a suit as the county in which the facility is located or Travis County. The bill authorizes the attorney general and DSHS to recover reasonable expenses incurred in obtaining injunctive relief.

C.S.H.B. 1621 makes it a Class C misdemeanor offense for a person to knowingly establish or operate a diagnostic imaging facility or a fluoroscopy-guided pain management procedure center without the appropriate license. The bill specifies that each day a violation continues constitutes a separate offense. The bill sets out provisions relating to a person's liability for a civil penalty for a violation of the bill's provisions or a failure to comply with a rule adopted under the bill's provisions and the imposition of an administrative penalty on a person licensed under the bill's provisions who violates those provisions or a rule or order adopted under those provisions. The bill authorizes the attorney general and DSHS to recover reasonable expenses incurred in obtaining civil relief and requires all collected penalties to be deposited in the state treasury in the general revenue fund. The bill sets out provisions relating to the amount of a civil and administrative penalty, the reporting and notice of a violation and imposition of an administrative penalty, payment and hearing procedures, decisions by the commissioner of state health services, the appeal of an administrative penalty, stay of enforcement, penalty collection, decision by a court, remittance of penalty and interest, and release of bond if a penalty is not upheld. The bill specifies that a proceeding to impose the penalty is considered to be a contested case under the Administrative Procedure Act and makes its provisions relating to enforcement of licensing requirements and an administrative penalty effective September 1, 2012.

C.S.H.B. 1621 defines "C-arm fluoroscope," "commissioner," "department," "diagnostic imaging facility," "diagnostic imaging provider," "diagnostic imaging service," "executive

commissioner," "facility," "fluoroscope," "fluoroscopy-guided pain management procedure center," "fluoroscopy-guided pain management service," "pain management provider," and "person."

C.S.H.B. 1621 provides a short title, the Texas Diagnostic Imaging Facilities and Fluoroscopy-Guided Pain Management Procedure Centers Licensing Act, for purposes of citing its provisions and requires the executive commissioner of the Health and Human Services Commission, not later than January 1, 2012, to adopt the rules required by the bill's provisions.

#### **EFFECTIVE DATE**

Except as otherwise provided, September 1, 2011.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 1621 differs from the original by exempting a health facility, including a hospital, maintained or operated by the state or by a hospital district created under general or special law from diagnostic imaging facility and fluoroscopy-guided pain management procedure center license requirements, whereas the original exempts a health facility, including a hospital, maintained or operated by the state from those requirements.

C.S.H.B. 1621 contains provisions not included in the original exempting a diagnostic imaging facility or a fluoroscopy-guided pain management procedure center that uses only dental diagnostic technology, which may include cone-beam computed tomography, to obtain images of the maxillofacial region from diagnostic imaging facility and fluoroscopy-guided pain management procedure center license requirements.