

BILL ANALYSIS

C.S.H.B. 1700
By: Coleman
County Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There are a number of programs in place to assist with the recruitment of physicians to rural and underserved areas in Texas. Despite those efforts, state law remains a major barrier to successful recruitment in those areas because the state prohibits the corporate practice of medicine. Therefore, a hospital typically contracts with a physician group to provide the necessary care at the hospital, which can be a significant obstacle to recruitment and health care access in a rural area. However, there appears to be an increasing number of physicians who prefer to be employed by a local hospital and to receive a salary and benefits. Many physicians no longer want to establish their own private practices, preferring to avoid the complications of running a small business and the uncertain income from practicing medicine in a rural area. C.S.H.B. 1700 seeks to ease administrative burdens and provide a more cost-effective and efficient way to provide medical services.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1700 amends the Health and Safety Code to authorize a hospital that employs or seeks to employ a physician and that is designated as a critical access hospital under the authority of and in compliance with federal law, is a sole community hospital as defined by federal law, or is located in a county with a population of 50,000 or less to employ a physician and retain all or part of the professional income generated by the physician for medical services provided at the hospital and other health care facilities owned or operated by the hospital if the hospital meets certain requirements.

C.S.H.B. 1700 requires an applicable hospital that employs such a physician to appoint a chief medical officer who has been recommended by the medical staff of the hospital and approved by the governing board of the hospital, and to adopt, maintain, and enforce policies to ensure that a physician employed by the hospital exercises the physician's independent medical judgment in providing care to patients at the hospital and other health care facilities owned or operated by the hospital. The bill requires the adopted policies to be approved by the medical staff of the hospital and to include policies relating to credentialing and privileges, quality assurance, utilization review, peer review and due process, and medical decision-making and to include the implementation of a complaint mechanism to process and resolve complaints regarding interference or attempted interference with a physician's independent medical judgment.

C.S.H.B. 1700 requires each physician employed by a hospital to ultimately report to the chief medical officer of the hospital for all matters relating to the practice of medicine. The bill requires adopted policies to be approved by the medical staff of the hospital and requires, in the event of a conflict between a policy adopted by the medical staff and a policy of the hospital, a conflict management process to be jointly developed and implemented to resolve any such

conflict.

C.S.H.B. 1700 requires the chief medical officer to notify the Texas Medical Board that the hospital is employing physicians under the bill's provisions and that the chief medical officer will be the hospital's designated contact with the board. The bill requires the chief medical officer to immediately report to the board any action or event that the chief medical officer reasonably and in good faith believes constitutes a compromise of the independent medical judgment of a physician in caring for a patient.

C.S.H.B. 1700 requires the hospital to give equal consideration regarding the issuance of medical staff membership and privileges to physicians employed by the hospital and physicians not employed by the hospital. The bill requires a physician employed by a hospital to retain independent medical judgment in providing care to patients at the hospital and other health care facilities owned or operated by the hospital and prohibits such a physician from being disciplined for reasonably advocating for patient care.

C.S.H.B. 1700 authorizes a physician employed by a hospital for whom the hospital provides professional liability coverage to participate in the selection of the professional liability coverage, establishes that the physician has the right to an independent defense if the physician pays for that independent defense, and requires the physician to retain the right to consent to the settlement of any action or proceeding brought against the physician. The bill requires an agreement that includes a covenant not to compete entered into by a physician employed by a hospital to be subject to provisions of law relating to criteria for enforceability of covenants not to compete and any other applicable provisions.

C.S.H.B. 1700 prohibits its provisions from being construed as authorizing the governing body of a hospital to supervise or control the practice of medicine, as prohibited by the Medical Practice Act. The bill makes its provisions applicable to medical services provided by a physician at an applicable hospital and other health care facilities owned or operated by the hospital.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1700 contains provisions not included in the original making the bill's provisions relating to the employment of physicians by certain hospitals applicable to medical services provided by a physician at the hospital and other health care facilities owned or operated by the hospital and making related conforming changes.

C.S.H.B. 1700 omits a provision included in the original prohibiting the term of a physician employment contract from exceeding four years. The substitute omits provisions included in the original authorizing a hospital that is located in a county with a population of 50,000 or less and that does not meet other eligibility criteria to continue to employ any physicians employed by the hospital on or before the date of release of a federal decennial census that shows the county's population exceeds 50,000 and prohibiting the hospital from employing a new physician after that date.

C.S.H.B. 1700 differs from the original by requiring the chief medical officer appointed by a hospital to be recommended by the medical staff of the applicable hospital and approved by the governing board of the hospital, whereas the original requires the appointment of a chief medical officer who may be a member of the hospital's medical staff.

C.S.H.B. 1700 differs from the original by requiring policies adopted by an applicable hospital to

include credentialing and privileges, whereas the original requires credentialing, and peer review and due process, whereas the original requires peer review. The substitute differs from the original by requiring adopted policies to be approved by the medical staff of the hospital, whereas the original requires the adopted policies to be approved by the chief medical officer of the hospital.

C.S.H.B. 1700 contains a provision not included in the original requiring a conflict management process to be jointly developed and implemented to resolve conflicts between a policy adopted by the medical staff and a policy of the hospital.

C.S.H.B. 1700 contains provisions not included in the original requiring the chief medical officer to notify the Texas Medical Board that the hospital is employing physicians and that the chief medical officer will be the hospital's designated contact with the board, and requiring the chief medical officer to immediately report to the board any action or event that the chief medical officer reasonably and in good faith believes constitutes a compromise of the independent medical judgment of a physician in caring for a patient.

C.S.H.B. 1700 contains a provision not included in the original requiring the hospital to give equal consideration regarding the issuance of medical staff membership and privileges to physicians employed by the hospital and physicians not employed by the hospital. The substitute contains a provision not included in the original requiring a physician employed by a hospital to retain independent medical judgment in providing care to patients at the hospital and other health care facilities owned or operated by the hospital and prohibiting the physician from being disciplined for reasonably advocating for patient care.

C.S.H.B. 1700 contains a provision not included in the original authorizing a physician to participate in the selection of the professional liability coverage under certain circumstances, establishing that the physician has the right to an independent defense if the physician pays for that independent defense, and requiring the physician to retain the right to consent to the settlement of any action or proceeding brought against the physician.

C.S.H.B. 1700 contains a provision not included in the original requiring an employment agreement that includes a covenant not to compete entered into by a physician employed by a hospital to be subject to provisions relating to criteria for enforceability of covenants not to compete and any other applicable provisions.

C.S.H.B. 1700 omits a provision included in the original prohibiting the requirements of the bill's provisions related to the employment of physicians by certain hospitals from being voided or waived by contract.

C.S.H.B. 1700 omits a provision included in the original requiring the Texas Medical Board to certify a health organization to employ physicians licensed by the board if the organization is designated as a critical access hospital under the authority of and in compliance with federal law, is a sole community hospital as defined by federal law, or is a hospital located in a county with a population of 50,000 or less. The substitute omits provisions included in the original requiring a physician employed by such an organization to retain independent medical judgment in providing care to patients at the organization and prohibiting the physician from being penalized for reasonably advocating for patient care, and requiring a physician who has privileges at the organization and is employed by the hospital and a physician who is not employed by the hospital to be given equal consideration and treatment in the creation and execution of all medical staff bylaw provisions regardless of the physician's employer.