

BILL ANALYSIS

C.S.H.B. 1809
By: Thompson
Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties express concern that the law does not adequately address the registration and accreditation of facilities where diagnostic imaging services are provided. Recent reports indicate that a number of states currently prohibit or restrict the practice of a physician referring patients to a diagnostic imaging facility in which the physician has an ownership interest, but this practice is not addressed by Texas law. C.S.H.B. 1809 seeks to resolve these issues by providing registration procedures and requiring a health care provider referring a patient to a diagnostic imaging facility to disclose to the patient the provider's investment interest in the facility.

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. 1809 amends the Occupations Code to create a diagnostic imaging facility certificate of registration and prohibits a person from operating a diagnostic imaging facility without such a certificate of registration. The bill exempts the following facilities from the registration requirement: a birthing center licensed under the Texas Birthing Center Licensing Act; a hospital licensed under the Texas Hospital Licensing Law or a diagnostic imaging facility located within or connected to such a hospital; a hospital owned and operated by the State of Texas or a diagnostic imaging facility located within or connected to such a hospital; a diagnostic imaging facility owned or operated by a hospital licensed under the Texas Hospital Licensing Law or owned and operated by the state that is surveyed as a service of the hospital by an organization that has been granted deeming authority as a national accreditation program for hospitals, or is granted provider-based status, by the Centers for Medicare and Medicaid Services; and a diagnostic imaging facility that uses only dedicated dental diagnostic technology, which may include cone-beam computed tomography used only to obtain images of the maxillofacial region.

C.S.H.B. 1809 establishes application and issuance requirements and terms for renewal of a certificate of registration. The bill prohibits the Department of State Health Services (DSHS) from issuing a certificate of registration to a person unless the person's diagnostic imaging facility has been accredited by a nationally recognized accreditation organization approved by DSHS and establishes the factors DSHS is required to consider in approving accreditation organizations. The bill requires DSHS to issue a diagnostic imaging facility certificate of registration to a person who operates a diagnostic imaging facility accredited by a nationally recognized accreditation organization accepted by the Centers for Medicare and Medicaid Services if DSHS determines that the organization's accreditation criteria meet all DSHS requirements.

C.S.H.B. 1809 authorizes a person who operates a diagnostic imaging facility that is registered or is exempt from such registration under the bill's provisions to adopt and enforce safety

standards that conform to the recommendations of the American College of Radiology's ACR Guidance Document for Safe MR Practices as the document existed on January 1, 2011, or a more current version of the document approved by DSHS.

C.S.H.B. 1809 requires a health care provider making a referral for diagnostic imaging services to disclose in writing to the provider's patients the provider's investment interest in the diagnostic imaging facility, advise the provider's patients that the patient may choose to have another diagnostic imaging facility provide the diagnostic imaging services, and obtain and record the patient's written consent after the disclosure and before the diagnostic imaging services are provided.

C.S.H.B. 1809 makes a person who operates a diagnostic imaging facility or a diagnostic imaging provider that violates the bill's provisions or rules adopted under the bill's provisions subject to a civil penalty of not more than \$1,000 for each violation. The bill requires the attorney general, at the request of DSHS, to bring an action to collect such a civil penalty and authorizes DSHS and the attorney general to each recover reasonable expenses incurred in obtaining the penalty, including investigation and court costs and reasonable attorney's fees, witness fees, and deposition expenses. The bill requires expenses recovered by DSHS to be deposited in a separate account outside the state treasury to be used by DSHS in the enforcement of the bill's provisions.

C.S.H.B. 1809 requires the executive commissioner of the Health and Human Services Commission, on behalf of DSHS and as necessary to protect the public health and safety, to adopt rules, not later than January 1, 2012, necessary to implement the bill's provisions and specifying the procedures health care providers and diagnostic imaging providers are required to use to comply with the bill's provisions. The bill defines "department," "diagnostic imaging equipment," "diagnostic imaging facility," "diagnostic imaging provider," "diagnostic imaging service," "patient," "referral," "immediate family member," "investment interest," "investor," and "licensing authority," provides for the meaning of "health care provider" by reference, and provides for the meaning of "related to the provider" by reference to federal law.

C.S.H.B. 1809 establishes that a person is not required to hold a diagnostic imaging facility certificate of registration to operate a diagnostic imaging facility until March 1, 2012.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1809 differs from the original by defining "health care provider" to mean a physician licensed under the Medical Practice Act or a nurse licensed under provisions of law relating to the regulation of nursing, whereas the original defines the term to mean a person licensed as a health care professional or authorized to practice in health care under the Medical Practice Act, provisions of law relating to certain other professions that perform medical procedures, or provisions of law relating to the regulation of nursing. The substitute, in the definition of "referral," contains a specification not included in the original that the term does not include a request for or ordering of nondiagnostic imaging obtained for the sole purpose of direct incorporation into treatment planning systems in the delivery of radiation therapy.

C.S.H.B. 1809 contains a provision not included in the original authorizing a person who operates a registered diagnostic imaging facility or a diagnostic imaging facility exempt from registration to adopt and enforce safety standards that conform to certain specified recommendations.

C.S.H.B. 1809, in a provision exempting certain facilities from the requirement to hold a

diagnostic imaging facility certificate of registration, contains as such facilities not included in the original a hospital owned and operated by the state and certain specified diagnostic imaging facilities.

C.S.H.B. 1809 contains a provision not included in the original requiring the Department of State Health Services (DSHS) to issue a diagnostic imaging facility certificate of registration to a person who operates a diagnostic imaging facility accredited by a nationally recognized accreditation organization accepted by the Centers for Medicare and Medicaid Services if DSHS determines that the accreditation criteria meet DSHS requirements.

C.S.H.B. 1809 omits provisions included in the original requiring the owner or operator of a diagnostic imaging facility that provides a diagnostic imaging service for a referring health care provider to report certain specified information to DSHS, requiring such information to be made available to the public, and providing for the form and submission of that report.

C.S.H.B. 1809, in a provision requiring a health care provider making a referral for diagnostic imaging services to disclose investment interest information to the provider's patients and to advise the provider's patients that the patient may choose to have another diagnostic imaging facility provide the diagnostic imaging services, omits a requirement included in the original that the provider also provide such information to the patient's third party payor. The substitute omits a provision included in the original defining "third party payor."

C.S.H.B. 1809 omits a provision included in the original specifying that a diagnostic imaging facility's failure to report certain required information constitutes grounds for disciplinary action, including the imposition of an administrative penalty, by DSHS.

C.S.H.B. 1809 omits provisions included in the original requiring DSHS to conduct a study of information submitted to the department regarding health care provider referrals and to submit a report regarding the study to the lieutenant governor and the speaker of the house of representatives.