

BILL ANALYSIS

C.S.H.B. 3809
By: Hardcastle
County Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Muenster Hospital District, like other rural hospital districts across the state, has difficulty recruiting and retaining physicians, thus limiting access to health care by district residents. Interested parties contend that if the district is allowed to directly employ physicians, the resulting economic security will enable a physician to relocate and reside in the community and help the district to recruit and retain physicians to provide medically necessary services. C.S.H.B. 3809 seeks to establish provisions relating to the authority of the board of directors of the district to employ physicians and other health care providers.

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. 3809 amends the Special District Local Laws Code to specify that the authority of the board of directors of the Muenster Hospital District to employ certain health care professionals is employment as considered necessary for the efficient operation of the district, rather than for the efficient operation of the hospital. The bill expands the professionals the board is authorized to employ to include health care providers other than physicians and physicians, but makes the employment of physicians subject to the following provisions of the bill.

C.S.H.B. 3809 authorizes the board to employ a physician and retain all or part of the professional income generated by the physician for medical services provided at a hospital or other health care facility owned or operated by the district if the board satisfies certain requirements. The bill requires the board to appoint a chief medical officer for the district who has been recommended by the medical staff of the district and to adopt, maintain, and enforce policies to ensure that a physician employed by the district exercises the physician's independent medical judgment in providing care to patients.

C.S.H.B. 3809 requires adopted policies 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. The bill requires adopted policies to be approved by the district medical staff. The bill requires the district medical staff and the board to jointly develop and implement a conflict management policy to resolve any conflict between a medical staff policy and a board policy.

C.S.H.B. 3809, for all matters relating to the practice of medicine, requires each physician employed by the district to ultimately report to the chief medical officer of the district. The bill requires the chief medical officer to notify the Texas Medical Board that the district board of directors is employing physicians and that the chief medical officer is the board's designated

contact with the Texas Medical Board. The bill requires the chief medical officer to immediately report to the Texas Medical 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. The bill requires the district board of directors to give equal consideration regarding the issuance of medical staff membership and privileges to physicians employed by the district and physicians not employed by the district.

C.S.H.B. 3809 requires a physician employed by the district to retain independent medical judgment in providing care to patients and prohibits such a physician from being disciplined for reasonably advocating for patient care. The bill, if the district provides professional liability coverage for physicians employed by the district, authorizes a physician employed by the district to participate in the selection of the professional liability coverage and establishes that the physician has the right to an independent defense at the physician's own cost and retains the right to consent to the settlement of any action or proceeding brought against the physician. The bill establishes that if a physician employed by the district enters into an employment agreement that includes a covenant not to compete, the agreement is subject to statutory provisions relating to criteria for enforceability of covenants not to compete.

C.S.H.B. 3809 prohibits the district board of directors from delegating to the district administrator the authority to hire a physician. The bill makes its provisions relating to the employment of physicians applicable to medical services provided by a physician at a hospital or other health care facility owned or operated by the district. The bill prohibits such provisions from being construed as authorizing the district board of directors to supervise or control the practice of medicine as prohibited under the Medical Practice Act. The bill makes a conforming change.

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. 3809 differs from the original by establishing the board of directors of the Muenster Hospital District's authority to employ employees as considered necessary for the efficient operation of the district, rather than the hospital, as in the original.

C.S.H.B. 3809 differs from the original by authorizing the board to employ a physician and retain all or part of the professional income generated by the physician for medical services provided at a hospital or other health care facility owned or operated by the district if the board satisfies certain requirements, whereas the original authorizes the board to employ physicians without specifying applicable requirements.

C.S.H.B. 3809 contains provisions not included in the original requiring the board to appoint a chief medical officer of the district and to adopt, maintain, and enforce policies to ensure that a physician employed by the district exercises the physician's independent medical judgment in providing care to patients; setting out the required content of the adopted policies, which must be approved by the district medical staff; and requiring the staff and the board to jointly develop and implement a conflict management policy to resolve any conflict between a medical staff policy and a board policy.

C.S.H.B. 3809 contains provisions not included in the original requiring each physician employed by the district to ultimately report to the chief medical officer for all matters relating to the practice of medicine and setting out the duties of the chief medical officer.

C.S.H.B. 3809 contains provisions not included in the original requiring the district board of directors to give equal consideration regarding the issuance of medical staff membership and

privileges to physicians employed by the district and physicians not employed by the district, and requiring a physician employed by the district to retain independent medical judgment in providing care to patients and prohibiting such a physician from being disciplined for reasonably advocating for patient care.

C.S.H.B. 3809 contains provisions not included in the original relating to professional liability coverage for physicians employed by the district and establishing that the physician has the right to an independent defense at the physician's own cost and retains the right to consent to the settlement of any action or proceeding brought against the physician. The substitute contains a provision not included in the original establishing that if a physician employed by the district enters into an employment agreement that includes a covenant not to compete, the agreement is subject to statutory provisions relating to criteria for enforceability of covenants not to compete.

C.S.H.B. 3809 contains a provision not included in the original making the bill's provisions relating to the employment of physicians applicable to medical services provided by a physician at a hospital or other health care facility owned or operated by the district.