

## **BILL ANALYSIS**

C.S.H.B. 3816  
By: Hardcastle  
County Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The Nocona 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. 3816 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. 3816 amends the Special District Local Laws Code to authorize the board of directors of the Nocona Hospital District to employ health care providers other than physicians as the board considers necessary for the efficient operation of the district and authorizes employment of physicians, but only as provided by the following provisions of the bill.

C.S.H.B. 3816 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. 3816 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. 3816, 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.

C.S.H.B. 3816 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. The bill 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.

C.S.H.B. 3816, 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. The bill prohibits the district board of directors from delegating to the chief executive officer of the district the authority to hire a physician and makes a conforming change.

C.S.H.B. 3816 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. 3816 differs from the original by authorizing the board of directors of the Nocona Hospital District to employ physicians only as provided by provisions of the bill relating to the employment of physicians, whereas the original authorizes the board to employ physicians as the board considers necessary for the efficient operation of the district.

C.S.H.B. 3816 contains a provision not included in the original 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. The substitute contains provisions not included in the original requiring the board to appoint a chief medical officer for 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. 3816 contains provisions not included in the original requiring each physician employed by the district to ultimately report to the chief medical officer of the district for all matters relating to the practice of medicine and setting out the duties of the chief medical officer.

C.S.H.B. 3816 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, 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. 3816 contains provisions not included in the original, if the district provides professional liability coverage for physicians employed by the district, authorizing a physician employed by the district to participate in the selection of the professional liability coverage 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. The substitute contains provisions not included in the original prohibiting the district board of directors from delegating to the chief executive officer of the district the authority to hire a physician and making a conforming change.

C.S.H.B. 3816 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.