

BILL ANALYSIS

Senate Research Center

S.B. 894
By: Duncan et al.
State Affairs
8/17/2011
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In Texas, the prohibition of the corporate practice of medicine dates back to the early 1900s to curb the unlicensed practice of medicine in response to a concern about unqualified people peddling miracle cures and potions to cure a litany of medical and psychological conditions.

Moreover, as growth in the medical profession developed, many private businesses saw opportunity in the practice of medicine, and they began to develop clinics with hired physicians to provide medical care to the public. The medical community had concerns about this growth of corporate clinics and sought legal and legislative prohibitions to these practices. In response to those concerns, many states, including Texas, created requirements that only an individual could be licensed to practice medicine. Courts have consistently interpreted this requirement as a prohibition against the corporate practice of medicine.

Texas is one of only five states that continues to actively define or actively enforce some form of prohibition of the corporate practice of medicine. However, Texas does allow private nonprofit medical schools, school districts, nonprofit health organizations certified by the Texas Medical Board, federally qualified health care centers, and migrant, community, and homeless centers to employ physicians. Additionally, the legislature has allowed approximately 12 hospital districts to change their enabling legislation to employ physicians. The state itself is allowed to employ physicians to work in state academic medical centers, state hospitals, and prisons.

Many smaller Texas communities report that the prohibition against the hiring of physicians is a significant factor contributing to the inability to recruit and retain physicians to serve in those communities. When an individual physician is required to establish a solo practice that requires health insurance and retirement benefits, the cost and administrative burden can be a deterrent to agreeing to practice in a small community.

S.B. 894 expands the current exemptions from the prohibition of the corporate practice of medicine to include a hospital in a county with a population of less than 50,000, a hospital designated as a critical access hospital, or a hospital that is a sole community hospital. S.B. 894 provides clear protections to ensure that employed physicians maintain independent medical judgment.

S.B. 894 amends current law relating to employment of physicians by certain hospitals.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 311, Health and Safety Code, by adding Subchapter E, as follows:

SUBCHAPTER E. EMPLOYMENT OF PHYSICIANS BY CERTAIN HOSPITALS

Sec. 311.061. APPLICABILITY AND CONSTRUCTION OF SUBCHAPTER. (a) Provides that this subchapter applies only to a hospital that employs or seeks to employ a physician and that:

(1) is designated as a critical access hospital under the authority of and in compliance with 42 U.S.C. Section 1395i-4;

(2) is a sole community hospital, as that term is defined by 42 U.S.C. Section 1395ww(d)(5)(D)(iii); or

(3) is located in a county with a population of 50,000 or less.

(b) Prohibits this subchapter from being construed as authorizing the governing body of a hospital to supervise or control the practice of medicine, as prohibited under Subtitle B (Physicians), Title 3 (Health Professions), Occupations Code.

(c) Provides that this subchapter applies to medical services provided by a physician at the hospital and other health care facilities owned or operated by the hospital.

Sec. 311.062. EMPLOYMENT OF PHYSICIANS PERMITTED. Authorizes a hospital 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 satisfies the requirements of this subchapter.

Sec. 311.063. HOSPITAL DUTIES AND POLICIES. (a) Requires a hospital that employs physicians under this subchapter to:

(1) 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

(2) 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.

(b) Requires the policies adopted under this section to include:

(1) policies relating to credentialing and privileges; quality assurance; utilization review; peer review and due process; and medical decision-making; and

(2) the implementation of a complaint mechanism to process and resolve complaints regarding interference or attempted interference with a physician's independent medical judgment.

(c) Requires that the policies adopted under this section be approved by the medical staff of the hospital.

(d) Requires each physician employed by a hospital under this subchapter, for all matters relating to the practice of medicine, to ultimately report to the chief medical officer of the hospital. Requires that the policies adopted under this section be approved by the medical staff of the hospital. Requires that a conflict management process, in the event of a conflict between a policy adopted by the medical staff and a policy of the hospital, be jointly developed and implemented to resolve any such conflict.

(e) Requires the chief medical officer to notify the Texas Medical Board (TMB) that the hospital is employing physicians under this subchapter and that the chief medical officer will be the hospital's designated contact with TMB. Requires the chief medical officer to immediately report to TMB 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.

(f) 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.

(g) 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 provides that the physician may not be disciplined for reasonably advocating for patient care.

(h) Provides that a physician, if a hospital provides professional liability coverage for a physician employed by a hospital, may participate in the selection of the professional liability coverage; has the right to an independent defense if the physician pays that independent defense; and shall retain the right to consent to the settlement of any action or proceeding brought against the physician.

(i) Requires that an employment agreement that includes a covenant not to compete, if a physician employed by a hospital enters into the agreement, be subject to Section 15.50 (Criteria for Enforceability of Covenants Not to Compete), Business & Commerce Code, and any other applicable provisions.

SECTION 2. Effective date: upon passage or September 1, 2011.