

BILL ANALYSIS

S.B. 1255
By: Estes
Urban Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Section 165.156 (Misrepresentation Regarding Entitlement to Practice Medicine), Occupations Code, makes it unlawful for any individual, partnership, trust, association, or corporation by use of any letters, words, or terms, as an affix on stationary or advertisements or in any other manner, to indicate that the individual, partnership, trust, association, or corporation is entitled to practice medicine if the individual or entity is not licensed to practice.

This has been interpreted to mean that hospitals cannot employ physicians who want to be employed. S.B.1255 will allow the board of a hospital authority created by the governing body of a municipality with a population of not more than 10,000 to employ physicians, technicians, nurses, or other health care providers, fiscal agents, accountants, and other necessary employees. This bill will allow Wise Regional Health System in Decatur and Smithville Regional Hospital in Smithville to employ physicians.

S.B.1255 amends current law relating to the employment of physicians by certain municipal hospital authorities.

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

SECTION 1. Amends Section 262.023(b), Health and Safety Code, to authorize the board of directors of a hospital authority (board) to delegate to the manager or executive director the authority to manage the hospital and to employ and discharge employees other than physicians hired in accordance with Section 262.0235.

SECTION 2. Amends Subchapter C, Chapter 262, Health and Safety Code, by adding Section 262.0235, as follows:

Sec. 262.0235. EMPLOYMENT OF PHYSICIAN. (a) Provides that this section applies only to a hospital authority (authority) that is created by the governing body of a municipality with a population of less than 10,000 and that owns or operates a hospital with more than 50 licensed beds.

(b) 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 authority if the board satisfies the requirements of this section.

(c) Requires the board to:

(1) appoint a chief medical officer for the authority who has been recommended by the medical staff of the authority; and

(2) adopt, maintain, and enforce policies to ensure that a physician employed by the authority exercise the physician's independent medical judgment in providing care to patients.

(d) Requires that the policies adopted under this section include:

(1) policies relating to:

(A) credentialing and privileges;

- (B) quality assurance;
- (C) utilization review;
- (D) peer review and due process; and
- (E) 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.

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

(f) Requires each physician employed by an authority, for all matters relating to the practice of medicine, to ultimately report to the chief medical officer of the authority.

(g) Requires the chief medical officer to notify the Texas Medical Board (TMB) that the board is employing physicians under this section and that the chief medical officer is the board'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.

(h) Requires the board to give equal consideration regarding the issuance of medical staff membership and privileges to physicians employed by the authority and physicians not employed by the authority.

(i) Requires that a physician employed by an authority retain independent medical judgment in providing care to patients and prohibits the physician from being disciplined for reasonably advocating for patient care.

(j) Authorizes a physician employed by the authority, if an authority provides professional liability coverage for physicians employed by the authority, to participate in the selection of the professional liability coverage, have the right to an independent defense at the physician's own cost, and retain the right to consent to the settlement of any action or proceeding brought against the physician.

(k) Provides that, if a physician employed by an authority enters into an employment agreement that includes a covenant not to compete, the agreement is subject to Section 15.50 (Criteria for Enforceability of Covenants Not to Compete), Business & Commerce Code.

(l) Prohibits the board from delegating to the manager or executive director of a hospital owned or operated by the hospital authority the authority to hire a physician.

(m) Prohibits this section from being construed as authorizing the board to supervise or control the practice of medicine as prohibited by Subtitle B (Physicians), Title 3 (Health Professions), Occupations Code.

SECTION 3. Effective date: upon passage or September 1, 2011.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2011.