

BILL ANALYSIS

Senate Research Center

S.B. 1661
By: Duncan
State Affairs
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas is one of only five states that continues to explicitly define or actively enforce some form of prohibition on the corporate practice of medicine. However, exemptions have been granted to certain types of organizations that allow for the employment of physicians. Employment of physicians is allowed for health organizations established by the provisions of Chapter 162 (Regulation of Practice of Medicine), Occupations Code, and certified by the Texas Medical Board. Current law requires these health organizations to be organized and incorporated solely by physicians.

Currently, there are no provisions providing protections for the independent medical judgment of physicians employed by these types of health organizations. S.B. 1661 establishes protections prohibiting health organizations employing physicians from interfering with, controlling, or otherwise directing a physician's professional judgment.

S.B. 1661 amends current law relating to the regulation of health organizations certified by the Texas Medical Board, and imposes an administrative penalty.

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 Subchapter A, Chapter 162, Occupations Code, by adding Sections 162.0021, 162.0022, 162.0023, and 162.0024, as follows:

Sec. 162.0021. INTERFERENCE WITH PHYSICIAN'S PROFESSIONAL JUDGMENT PROHIBITED. Prohibits a health organization certified under Section 162.001(b) (requiring the Texas Medical Board (TMB) to approve and certify certain health organizations) from interfering with, controlling, or otherwise directing a physician's professional judgment in violation of this subchapter, or any other provision of law, including TMB rules.

Sec. 162.0022. HEALTH ORGANIZATION POLICIES. (a) Requires a health organization certified under Section 162.001(b) to adopt, maintain, and enforce policies to ensure that a physician employed by the health organization exercises independent medical judgment when providing care to patients.

(b) Requires that the policies adopted under this section include policies relating to credentialing, quality assurance, utilization review, and peer review.

(c) Requires that the policies adopted under this section, including any amendments to the policies, be developed by the board of directors or board of trustees, as applicable, of the health organization and approved by an affirmative vote.

(d) Requires that the policies of the health organization be drafted and interpreted in a manner that reserves the sole authority to engage in the practice of medicine to a physician participating in the health organization, regardless of the physician's employment status with the health organization.

Sec. 162.0023. **DISCIPLINARY ACTION RESTRICTION.** Provides that a physician employed by a health organization certified under Section 162.001(b) retains independent medical judgment in providing care to patients, and the health organization is prohibited from disciplining the physician for reasonably advocating for patient care.

Sec. 162.0024. **CONTRACTUAL WAIVER PROHIBITED.** (a) Prohibits the requirements of this subchapter from being voided or waived by contract.

(b) Authorizes a member of a health organization certified under Section 162.001(b), notwithstanding Subsection (a), to establish ethical and religious directives, and authorizes a physician to contractually agree to comply with those directives.

SECTION 2. Amends Section 162.003, Occupations Code, as follows:

Sec. 162.003. New heading: **REFUSAL TO CERTIFY; REVOCATION; PENALTY.** Authorizes TMB, on a determination that a health organization is established, organized, or operated in violation of or with the intent to violate this subtitle, to:

- (1) refuse to certify the health organization on application for certification by the organization under Section 162.001 (Certification by Board);
- (2) revoke a certification made under Section 162.001 to that organization; or
- (3) impose an administrative penalty against the health organization under Subchapter A (Administrative Penalties), Chapter 165 (Penalties).

Deletes existing text requiring TMB, on a determination that a health organization is established, organized, or operated in violation of or with the intent to violate this subtitle, to revoke a certification made under Section 162.001 to that organization. Makes nonsubstantive changes.

SECTION 3. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2011.

(b) Effective date, Section 162.0022, Occupations Code, as added by this Act: January 1, 2012.