

By: Duncan, et al.

S.B. No. 894

A BILL TO BE ENTITLED

AN ACT

relating to employment of physicians by certain hospitals.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 311, Health and Safety Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. EMPLOYMENT OF PHYSICIANS BY CERTAIN HOSPITALS

Sec. 311.061. APPLICABILITY AND CONSTRUCTION OF

SUBCHAPTER. (a) 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) This subchapter may not be construed as authorizing the governing body of a hospital to supervise or control the practice of medicine, as prohibited under Subtitle B, Title 3, Occupations Code.

(c) 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. A hospital may employ a physician and retain all or part of the

1 professional income generated by the physician for medical services
2 provided at the hospital and other health care facilities owned or
3 operated by the hospital if the hospital satisfies the requirements
4 of this subchapter.

5 Sec. 311.063. HOSPITAL DUTIES AND POLICIES. (a) A
6 hospital that employs physicians under this subchapter shall:

7 (1) appoint a chief medical officer who has been
8 recommended by the medical staff of the hospital and approved by the
9 governing board of the hospital; and

10 (2) adopt, maintain, and enforce policies to ensure
11 that a physician employed by the hospital exercises the physician's
12 independent medical judgment in providing care to patients at the
13 hospital and other health care facilities owned or operated by the
14 hospital.

15 (b) The policies adopted under this section must include:

16 (1) policies relating to:

17 (A) credentialing and privileges;

18 (B) quality assurance;

19 (C) utilization review;

20 (D) peer review and due process; and

21 (E) medical decision-making; and

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

25 (c) The policies adopted under this section must be approved
26 by the medical staff of the hospital.

27 (d) For all matters relating to the practice of medicine,

1 each physician employed by a hospital under this subchapter shall
2 ultimately report to the chief medical officer of the hospital. The
3 policies adopted under this section must be approved by the medical
4 staff of the hospital. In the event of a conflict between a policy
5 adopted by the medical staff and a policy of the hospital, a
6 conflict management process shall be jointly developed and
7 implemented to resolve any such conflict.

8 (e) The chief medical officer shall notify the Texas Medical
9 Board that the hospital is employing physicians under this
10 subchapter and that the chief medical officer will be the
11 hospital's designated contact with the Texas Medical Board. The
12 chief medical officer shall immediately report to the Texas Medical
13 Board any action or event that the chief medical officer reasonably
14 and in good faith believes constitutes a compromise of the
15 independent medical judgment of a physician in caring for a
16 patient.

17 (f) The hospital shall give equal consideration regarding
18 the issuance of medical staff membership and privileges to
19 physicians employed by the hospital and physicians not employed by
20 the hospital.

21 (g) A physician employed by a hospital shall retain
22 independent medical judgment in providing care to patients at the
23 hospital and other health care facilities owned or operated by the
24 hospital and may not be disciplined for reasonably advocating for
25 patient care.

26 (h) If a hospital provides professional liability coverage
27 for a physician employed by a hospital, the physician may

1 participate in the selection of the professional liability
2 coverage, has the right to an independent defense if the physician
3 pays for that independent defense, and shall retain the right to
4 consent to the settlement of any action or proceeding brought
5 against the physician.

6 (i) If a physician employed by a hospital enters into an
7 employment agreement that includes a covenant not to compete, the
8 agreement shall be subject to Section 15.50, Business & Commerce
9 Code, and any other applicable provisions.

10 SECTION 2. This Act takes effect immediately if it receives
11 a vote of two-thirds of all the members elected to each house, as
12 provided by Section 39, Article III, Texas Constitution. If this
13 Act does not receive the vote necessary for immediate effect, this
14 Act takes effect September 1, 2011.