

BILL ANALYSIS

C.S.H.B. 746
By: Ashby
Homeland Security & Public Safety
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In response to the problems that arise in the deployment of health practitioners during devastating natural disasters because of the lack of uniformity in state laws regarding the scope of practice and licensing of such practitioners, the Uniform Law Commission has developed a model uniform law to regulate volunteer health practitioners providing services during emergencies. The goal of this model law is to provide a system whereby health practitioners licensed in any state can be deployed to health care facilities and disaster relief organizations in another state in which an emergency is occurring and can follow a clearly understood protocol in meeting the needs of the volunteers and relief agencies while ensuring the delivery of high quality care to disaster victims. C.S.H.B. 746 seeks to accommodate the provisions of the commission's model law to ensure proper registration, scope of practice, liabilities, and recognition of licenses of health practitioners in disaster situations on an intrastate basis.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Division of Emergency Management in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 746 amends the Occupations Code to establish the Uniform Emergency Volunteer Health Practitioners Act, applicable to volunteer health practitioners who are registered with the system established under the bill's provisions and who provide health or veterinary services in Texas for a host entity while an emergency declaration is in effect. The bill authorizes the Texas Division of Emergency Management, while an emergency declaration is in effect, by order to limit, restrict, or otherwise regulate the duration of practice by volunteer health practitioners, the geographical areas in which volunteer health practitioners may practice, the types of volunteer health practitioners who may practice, and any other matters necessary to coordinate effectively the provision of health or veterinary services during the emergency. The bill authorizes such an order to take effect immediately, without prior notice or comment, and specifies that such an order is not a rule for purposes of administrative procedures. The bill requires a host entity that uses volunteer health practitioners to provide health or veterinary services in Texas to consult and coordinate its activities with the division to the extent practicable to provide for the efficient and effective use of volunteer health practitioners and to comply with laws relating to the management of emergency health or veterinary services.

C.S.H.B. 746 requires the Department of State Health Services (DSHS) to administer a volunteer health practitioner registration system that accepts applications for the registration of volunteer health practitioners before or during an emergency, includes information about the licensing and good standing of health practitioners that is accessible by authorized persons, is capable of confirming whether a health practitioner is licensed and in good standing before health or veterinary services are provided by the practitioner under the bill's provisions, and includes information regarding the results of a criminal history record information check performed on the volunteer health practitioners listed in the system. The bill requires a state agency that grants

a license to a health practitioner, while an emergency declaration is in effect, to coordinate with DSHS to provide licensing or criminal history record information for volunteer health practitioners seeking registration. The bill authorizes DSHS, in satisfying requirements relating to its administration of the system and interagency cooperation regarding licensing or criminal record information, to use information available in the Texas disaster volunteer registry maintained by DSHS and to enter into agreements with disaster relief organizations or verification systems of other states for the advance registration of volunteer health practitioners under federal law. The bill prohibits DSHS from allowing an applicant for registration who has an unacceptable licensing or criminal history to register, and prohibits the applicant from serving as a volunteer health practitioner.

C.S.H.B. 746 authorizes the division, a person authorized to act on the division's behalf, or a host entity, while an emergency declaration is in effect, to confirm whether volunteer health practitioners used in Texas are registered with the bill's registration system and limits such confirmation to obtaining the identity of practitioners from the system and determining whether the system indicates that the practitioners are licensed and in good standing and have an acceptable criminal history. The bill requires DSHS, on request by a person in Texas authorized to confirm the license status of volunteer health practitioners or a similarly authorized person in another state, to notify the person of the identity of volunteer health practitioners registered with the bill's registration system and whether the practitioners are licensed and in good standing and have an acceptable criminal history. The bill specifies that a host entity is not required to use the services of a volunteer health practitioner even if the practitioner is registered with the registration system and the system indicates that the practitioner is licensed and in good standing and has an acceptable criminal history.

C.S.H.B. 746 authorizes a volunteer health practitioner who is registered with the bill's registration system, licensed, and in good standing in another state and who has an acceptable criminal history to practice in Texas while an emergency declaration is in effect to the extent authorized by the bill's provisions as if the practitioner were licensed in Texas. The bill specifies that such a volunteer health practitioner is not entitled to the protections of the bill's provisions if the practitioner is licensed in more than one state and any license of the practitioner is suspended, revoked, or subject to an agency order limiting or restricting practice privileges or has been voluntarily terminated under threat of sanction. The bill specifies that its provisions do not affect credentialing or privileging standards of a health facility and do not preclude a health facility from waiving or modifying those standards while an emergency declaration is in effect.

C.S.H.B. 746 requires a volunteer health practitioner to adhere to the scope of practice for a similarly licensed practitioner established by the licensing provisions or other laws of Texas and specifies that the bill's provisions do not authorize a volunteer health practitioner to provide a service that is outside the practitioner's scope of practice, even if a similarly licensed practitioner in Texas would be permitted to provide the service. The bill authorizes the division to modify or restrict the health or veterinary services that a volunteer health practitioner may provide, authorizes an order regarding such a modification or restriction to take effect immediately, without prior notice or comment, and specifies that such an order is not a rule for purposes of administrative procedures. The bill authorizes a host entity to restrict the health or veterinary services that a volunteer health practitioner may provide under the bill's provisions. The bill specifies that a volunteer health practitioner does not engage in unauthorized practice unless the practitioner has reason to know of any limitation, modification, or restriction on the practitioner's authority to provide a service or to know that a similarly licensed practitioner in Texas would not be permitted to provide the service and specifies the conditions under which the practitioner has reason to have such knowledge. The bill authorizes a licensing board or other disciplinary authority in Texas to impose administrative sanctions on a health practitioner licensed in Texas for conduct outside of the state in response to an out-of-state emergency and on a practitioner not licensed in Texas for conduct in the state in response to an in-state emergency and requires such a board or authority to report any administrative sanction imposed on a practitioner licensed in another state to the appropriate licensing board or other disciplinary authority in any other state.

in which the practitioner is known to be licensed. The bill requires a licensing board or other disciplinary authority, in determining whether to impose an administrative sanction, to consider the circumstances in which the conduct took place, including any exigent circumstances, and the practitioner's scope of practice, education, training, experience, and specialized skill.

C.S.H.B. 746 specifies that its provisions do not limit rights, privileges, or immunities provided to volunteer health practitioners by other laws, and do not affect requirements for the use of health practitioners under the Emergency Management Assistance Compact. The bill authorizes the division, under the Emergency Management Assistance Compact, to incorporate into the emergency forces of Texas volunteer health practitioners who are not officers or employees of the state or a political subdivision of the state. The bill authorizes the division to adopt rules to implement the bill's provisions and requires the division, in adopting rules, to consult with and consider the recommendations of the entity established to coordinate the implementation of the Emergency Management Assistance Compact and the rules adopted by similarly empowered agencies in other states to promote uniformity in the application of the bill's provisions and to make the emergency response systems in the various states reasonably compatible.

C.S.H.B. 746 provides for the limited civil liability of a volunteer health practitioner who provides health or veterinary services under the bill's provisions and vicarious liability except in cases involving certain conduct by the practitioner or a claim asserted by a host entity or by an entity located in Texas or another state that employs or uses the services of the practitioner. The bill limits the civil liability of a person who operates, uses, or relies on information provided by the volunteer health practitioner registration system except in cases involving certain conduct.

C.S.H.B. 746 requires a court or governmental entity, in applying and construing the bill's provisions, to take into consideration the need to promote uniformity of the law with respect to the subject matter of the bill's provisions among states that enact similar uniform laws.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 746 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subtitle A, Title 3, Occupations Code, is amended by adding Chapter 115 to read as follows:

CHAPTER 115. HEALTH OR VETERINARY SERVICES PROVIDED IN CATASTROPHIC CIRCUMSTANCES

Sec. 115.001. SHORT TITLE.

Sec. 115.002. DEFINITIONS. In this chapter:

(1) "Disaster relief organization" means an entity that provides emergency or disaster

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subtitle A, Title 3, Occupations Code, is amended by adding Chapter 115 to read as follows:

CHAPTER 115. HEALTH OR VETERINARY SERVICES PROVIDED IN CATASTROPHIC CIRCUMSTANCES

Sec. 115.001. SHORT TITLE.

Sec. 115.002. DEFINITIONS. In this chapter:

(1) "Department" means the Department of State Health Services.

(2) "Disaster relief organization" means an entity that provides emergency or disaster

relief services that include health or veterinary services provided by volunteer health practitioners and that:

(A) is designated or recognized as a provider of those services under a disaster response and recovery plan adopted by an agency of the federal government or the division; or

(B) regularly plans and conducts its activities in coordination with an agency of the federal government or the division.

(2) "Division" has the meaning assigned by Section 418.004, Government Code.

(3) "Emergency" means an event or condition that is a disaster as defined by Section 418.004, Government Code.

(4) "Emergency declaration" means a declaration of emergency issued by a person authorized to do so under the laws of this state, a political subdivision of this state, or a municipality or other local government within this state.

(5) "Emergency Management Assistance Compact" means the interstate compact approved by Congress (Pub. L. No. 104-321) as provided by Chapter 778, Health and Safety Code.

(6) "Entity" means a person other than an individual.

(7) "Health facility" means an entity licensed under the laws of this or another state to provide health or veterinary services.

(8) "Health practitioner" means an individual licensed under the laws of this or another state to provide health or veterinary services.

(9) "Health services" means the provision of treatment, care, advice or guidance, or other services or supplies related to the health or death of individuals or human populations, to the extent necessary to respond to an emergency, including:

(A) with respect to the physical or mental condition or functional status of an individual or the structure or function of the body:

(i) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care; and

(ii) counseling and assessment procedures or other related services;

(B) the sale or dispensing of a drug, a device, equipment, or another item to an individual in accordance with a prescription;

relief services that include health or veterinary services provided by volunteer health practitioners and that:

(A) is designated or recognized as a provider of those services under a disaster response and recovery plan adopted by an agency of the federal government or the division; or

(B) regularly plans and conducts its activities in coordination with an agency of the federal government or the division.

(3) "Division" has the meaning assigned by Section 418.004, Government Code.

(4) "Emergency" means an event or condition that is a disaster as defined by Section 418.004, Government Code.

(5) "Emergency declaration" means a declaration of emergency issued by the governor or a designee of the governor.

(6) "Emergency Management Assistance Compact" means the interstate compact approved by Congress (Pub. L. No. 104-321) as provided by Chapter 778, Health and Safety Code.

(7) "Entity" means a person other than an individual.

(8) "Health facility" means an entity licensed under the laws of this or another state to provide health or veterinary services.

(9) "Health practitioner" means an individual licensed under the laws of this or another state to provide health or veterinary services.

(10) "Health services" means the provision of treatment, care, advice or guidance, or other services or supplies related to the health or death of individuals or human populations, to the extent necessary to respond to an emergency, including:

(A) with respect to the physical or mental condition or functional status of an individual or the structure or function of the body:

(i) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care; and

(ii) counseling and assessment procedures or other related services;

(B) the sale or dispensing of a drug, a device, equipment, or another item to an individual in accordance with a prescription;

and

(C) funeral, cremation, cemetery, or other mortuary services.

(10) "Host entity" means an entity operating in this state that uses volunteer health practitioners to respond to an emergency.

(11) "License" means an authorization by a state agency to engage in health or veterinary services that are unlawful without the authorization. The term includes authorization under the laws of this state to an individual to provide health or veterinary services based on a national certification issued by a public or private entity.

(12) "Scope of practice" means the extent of the authorization to provide health or veterinary services granted to a health practitioner by a license issued to the practitioner in the state in which the principal part of the practitioner's services are rendered, including any conditions imposed by the licensing authority.

(13) "Veterinary services" means the provision of treatment, care, advice or guidance, or other services or supplies related to the health or death of an animal or to animal populations, to the extent necessary to respond to an emergency, including:

(A) diagnosis, treatment, or prevention of an animal disease, injury, or other physical or mental condition by the prescription, administration, or dispensing of a vaccine, a drug, surgery, or therapy;

(B) use of a procedure for reproductive management; and

(C) monitoring and treatment of animal populations for diseases that have spread or demonstrate the potential to spread to humans.

(14) "Volunteer health practitioner" means a health practitioner who provides health or veterinary services, regardless of whether for compensation. The term does not include a practitioner who receives compensation under a preexisting employment relationship with a host entity or affiliate that requires the practitioner to provide health services in this state, unless the practitioner is not a resident of this state and is employed by a disaster relief organization providing services in this state while an emergency declaration is in effect.

and

(C) funeral, cremation, cemetery, or other mortuary services.

(11) "Host entity" means an entity operating in this state that uses volunteer health practitioners to respond to an emergency.

(12) "License" means an authorization by a state agency to engage in health or veterinary services that are unlawful without the authorization. The term includes authorization under the laws of this state to an individual to provide health or veterinary services based on a national certification issued by a public or private entity.

(13) "Scope of practice" means the extent of the authorization to provide health or veterinary services granted to a health practitioner by a license issued to the practitioner in the state in which the principal part of the practitioner's services are rendered, including any conditions imposed by the licensing authority.

(14) "Veterinary services" means the provision of treatment, care, advice or guidance, or other services or supplies related to the health or death of an animal or to animal populations, to the extent necessary to respond to an emergency, including:

(A) diagnosis, treatment, or prevention of an animal disease, injury, or other physical or mental condition by the prescription, administration, or dispensing of a vaccine, a drug, surgery, or therapy;

(B) use of a procedure for reproductive management; and

(C) monitoring and treatment of animal populations for diseases that have spread or demonstrate the potential to spread to humans.

(15) "Volunteer health practitioner" means a health practitioner who provides health or veterinary services without compensation. The term does not include a practitioner who receives compensation under a preexisting employment relationship with a host entity or affiliate that requires the practitioner to provide health services in this state, unless the practitioner is not a resident of this state and is employed by a disaster relief organization providing services in this state while an emergency declaration is in effect.

Sec. 115.003. APPLICABILITY TO VOLUNTEER HEALTH PRACTITIONERS. This chapter applies to volunteer health practitioners who are registered with a system that complies with Section 115.005 and who provide health or veterinary services in this state for a host entity while an emergency declaration is in effect.

Sec. 115.004. REGULATION OF SERVICES DURING EMERGENCY.

Sec. 115.005. VOLUNTEER HEALTH PRACTITIONER REGISTRATION SYSTEMS. (a) To qualify as a volunteer health practitioner registration system, a system must:

- (1) accept applications for the registration of volunteer health practitioners before or during an emergency;
- (2) include information about the licensing and good standing of health practitioners that is accessible by authorized persons;
- (3) be capable of confirming whether a health practitioner is licensed and in good standing before health or veterinary services are provided by the practitioner under this chapter; and
- (4) meet one of the following conditions:
 - (A) be an emergency system for advance registration of volunteer health care practitioners established by a state and funded through the United States Department of Health and Human Services under Section 319I, Public Health Service Act (42 U.S.C. Section 247d-7b);
 - (B) be a local unit consisting of trained and equipped emergency response, public health, and medical personnel formed under Section 2801, Public Health Service Act (42 U.S.C. Section 300hh);
 - (C) be operated by a:
 - (i) disaster relief organization;
 - (ii) licensing board;
 - (iii) national or regional association of licensing boards or health practitioners;
 - (iv) health facility that provides comprehensive inpatient and outpatient health care services, including a tertiary care and teaching hospital; or
 - (v) governmental entity; or
 - (D) be designated by the division as a registration system for purposes of this chapter.

Sec. 115.003. APPLICABILITY TO VOLUNTEER HEALTH PRACTITIONERS. This chapter applies to volunteer health practitioners who are registered with the system administered by the department under Section 115.005 and who provide health or veterinary services in this state for a host entity while an emergency declaration is in effect.

Sec. 115.004. REGULATION OF SERVICES DURING EMERGENCY.

Sec. 115.005. VOLUNTEER HEALTH PRACTITIONER REGISTRATION SYSTEM. (a) The department shall administer a volunteer health practitioner registration system that:

- (1) accepts applications for the registration of volunteer health practitioners before or during an emergency;
- (2) includes information about the licensing and good standing of health practitioners that is accessible by authorized persons;
- (3) is capable of confirming whether a health practitioner is licensed and in good standing before health or veterinary services are provided by the practitioner under this chapter; and
- (4) includes information regarding the results of a criminal history record information check performed on the volunteer health practitioners listed in the system.

(b) While an emergency declaration is in effect, the division, a person authorized to act on behalf of the division, or a host entity may confirm whether volunteer health practitioners used in this state are registered with a registration system that complies with Subsection (a). Confirmation is limited to obtaining the identity of the practitioners from the system and determining whether the system indicates that the practitioners are licensed and in good standing.

(c) On request by a person in this state authorized under Subsection (b) or a similarly authorized person in another state, a registration system located in this state shall notify the person of the identity of volunteer health practitioners and whether the practitioners are licensed and in good standing.

(d) A host entity is not required to use the services of a volunteer health practitioner even if the practitioner is registered with a registration system that indicates that the practitioner is licensed and in good standing.

Sec. 115.006. RECOGNITION OF VOLUNTEER HEALTH PRACTITIONERS LICENSED IN OTHER

(b) To satisfy a requirement of Subsection (a) or (c), the department may:

(1) use information available in the Texas disaster volunteer registry maintained by the department; or

(2) enter into agreements with disaster relief organizations or the verification systems of other states for the advance registration of volunteer health practitioners under 42 U.S.C. Section 247d-7b.

(c) While an emergency declaration is in effect, a state agency that grants a license to a health practitioner shall coordinate with the department to provide licensing or criminal history record information for volunteer health practitioners seeking registration under this chapter.

(d) If an applicant for registration under this chapter has an unacceptable licensing or criminal history, the department may not allow the applicant to register and the applicant may not serve as a volunteer health practitioner under this chapter.

(e) While an emergency declaration is in effect, the division, a person authorized to act on behalf of the division, or a host entity may confirm whether volunteer health practitioners used in this state are registered with the registration system under Subsection (a). Confirmation is limited to obtaining the identity of the practitioners from the system and determining whether the system indicates that the practitioners are licensed and in good standing and have an acceptable criminal history.

(f) On request by a person in this state authorized under Subsection (e) or a similarly authorized person in another state, the department shall notify the person of the identity of volunteer health practitioners registered with the registration system and whether the practitioners are licensed and in good standing and have an acceptable criminal history.

(g) A host entity is not required to use the services of a volunteer health practitioner even if the practitioner is registered with the registration system and the system indicates that the practitioner is licensed and in good standing and has an acceptable criminal history.

Sec. 115.006. RECOGNITION OF VOLUNTEER HEALTH PRACTITIONERS LICENSED IN OTHER

STATES. (a) While an emergency declaration is in effect, a volunteer health practitioner registered with a registration system that complies with Section 115.005 who is licensed and in good standing in another state may practice in this state to the extent authorized by this chapter as if the practitioner were licensed in this state.

(b) A volunteer health practitioner qualified under Subsection (a) is not entitled to the protections of this chapter if the practitioner is licensed in more than one state and any license of the practitioner is suspended, revoked, or subject to an agency order limiting or restricting practice privileges or has been voluntarily terminated under threat of sanction.

Sec. 115.007. NO EFFECT ON CREDENTIALING AND PRIVILEGING.

Sec. 115.008. PROVISION OF VOLUNTEER HEALTH OR VETERINARY SERVICES; ADMINISTRATIVE SANCTIONS.

Sec. 115.009. RELATION TO OTHER LAWS.

Sec. 115.010. REGULATORY AUTHORITY.

Sec. 115.011. LIMITATIONS ON CIVIL LIABILITY FOR VOLUNTEER HEALTH PRACTITIONERS.

SECTION 2. In applying and construing Chapter 115, Occupations Code, as added by this Act, a court or governmental entity shall take into consideration the need to promote uniformity of the law with respect to the subject matter of this Act among states that enact similar uniform laws.

SECTION 3. This Act takes effect September 1, 2013.

STATES. (a) While an emergency declaration is in effect, a volunteer health practitioner registered with the registration system under Section 115.005 who is licensed and in good standing in another state and has an acceptable criminal history may practice in this state to the extent authorized by this chapter as if the practitioner were licensed in this state.

(b) A volunteer health practitioner qualified under Subsection (a) is not entitled to the protections of this chapter if the practitioner is licensed in more than one state and any license of the practitioner is suspended, revoked, or subject to an agency order limiting or restricting practice privileges or has been voluntarily terminated under threat of sanction.

Sec. 115.007. NO EFFECT ON CREDENTIALING AND PRIVILEGING.

Sec. 115.008. PROVISION OF VOLUNTEER HEALTH OR VETERINARY SERVICES; ADMINISTRATIVE SANCTIONS.

Sec. 115.009. RELATION TO OTHER LAWS.

Sec. 115.010. REGULATORY AUTHORITY.

Sec. 115.011. LIMITATIONS ON CIVIL LIABILITY FOR VOLUNTEER HEALTH PRACTITIONERS.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.