

BILL ANALYSIS

C.S.H.B. 1247
By: Clardy
County Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that for decades Texas has maintained requirements providing that only an individual may be licensed to practice medicine, that the courts have consistently interpreted these requirements as a prohibition against the corporate practice of medicine, and that Texas is one of only a few states that continues to actively define or actively enforce some form of prohibition against the corporate practice of medicine. These parties further contend that this prohibition was originally intended to prevent the unlicensed practice of medicine and to assuage the medical community's concerns about the rise of corporate clinics. However, some smaller Texas communities report that the current prohibition against the hiring of physicians is a significant factor contributing to the inability to recruit and retain physicians to serve in those communities. For example, the parties note, establishing a solo practice may require an individual physician to purchase health insurance and retirement benefits, leading to greater costs and an increased administrative burden that can ultimately deter the physician from agreeing to practice in that community.

Interested parties contend that Texas currently allows certain entities to employ physicians and that the legislature has allowed a number of hospital districts to change their enabling legislation to allow the employment of physicians. These parties assert that there is a need for the Nacogdoches County Hospital District to be able to employ physicians directly so that the district can attract world-class doctors and no longer be put at a disadvantage with other hospitals afforded the same right. C.S.H.B. 1247 seeks to address this issue by establishing provisions relating to the authority of the district's board of directors to employ physicians.

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

C.S.H.B. 1247 amends the Special District Local Laws Code, as effective April 1, 2013, to authorize the board of directors of the Nacogdoches County Hospital District 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 district if the board satisfies requirements as provided by the bill.

C.S.H.B. 1247 requires the board to appoint a chief medical officer for the district who has been recommended by the district medical staff and to adopt, maintain, and enforce policies to ensure that a district-employed physician exercises the physician's independent medical judgment in providing care to patients. The bill sets out certain requirements for adopted policies, requires approval of the policies by the district medical staff, and requires such staff 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.

C.S.H.B. 1247 requires each district-employed physician to report ultimately to the district chief medical officer for all matters relating to the practice of medicine and sets out the chief medical officer's notification and reporting requirements relating to the Texas Medical Board. The bill requires the district board of directors to give equal consideration regarding the issuance of medical staff membership and privileges to district-employed physicians and physicians not employed by the district, requires a district-employed physician to retain independent medical judgment in providing care to patients and prohibits such a physician from being disciplined for reasonably advocating for patient care, and sets out language regarding professional liability coverage for a district-employed physician if the district provides such coverage.

C.S.H.B. 1247 makes an employment agreement entered into by a district-employed physician that includes a covenant not to compete subject to certain Business & Commerce Code provisions regarding criteria for enforceability of such a covenant. The bill prohibits the board from delegating to the district's chief executive officer the authority to hire a physician. The bill makes its provisions relating to employment of physicians applicable to medical services provided by a physician at a hospital or other health care facility owned or operated by the district. The bill makes the board's authority to employ physicians granted under such provisions applicable as necessary for the district to fulfill its statutory mandate to provide medical care for the indigent and needy residents of the district. The bill prohibits such provisions from being construed as authorizing the board to supervise or control the practice of medicine as prohibited under the Medical Practice Act.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1247 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. The heading to Section 1069.060, Special District Local Laws Code, as effective April 1, 2013, is amended.

SECTION 2. Section 1069.060, Special District Local Laws Code, as effective April 1, 2013, is amended.

SECTION 3. Subchapter B, Chapter 1069, Special District Local Laws Code, as effective April 1, 2013, is amended by adding Section 1069.0605 to read as follows:

Sec. 1069.0605. EMPLOYMENT OF PHYSICIANS. (a) The board may employ a physician and retain all or part of the professional income generated by the physician for medical services provided at a

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

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Sec. 1069.0605. EMPLOYMENT OF PHYSICIANS. (a) The board may 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 district if the board satisfies the requirements of this section.

(b) The board shall:

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

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

(c) The policies adopted under this section must 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.

(d) The policies adopted under this section must be approved by the district medical staff. The district medical staff and the board shall jointly develop and implement a conflict management policy to resolve any conflict between a medical staff policy and a board policy.

(e) For all matters relating to the practice of medicine, each physician employed by the district shall ultimately report to the chief medical officer of the district.

(f) The chief medical officer shall notify the Texas Medical Board that the board is employing physicians under this section and that the chief medical officer is the board's designated contact with the Texas Medical Board. The chief medical officer shall immediately report to the Texas Medical Board 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.

(g) The board shall give equal consideration regarding the issuance of medical staff membership and privileges to physicians employed by the district and physicians not employed by the district.

(h) A physician employed by the district shall retain independent medical judgment

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(h) A physician employed by the district shall retain independent medical judgment

in providing care to patients and may not be disciplined for reasonably advocating for patient care.

(i) If the district provides professional liability coverage for physicians employed by the district, a physician employed by the district may participate in the selection of the professional liability coverage, has the right to an independent defense at the physician's own cost, and retains the right to consent to the settlement of any action or proceeding brought against the physician.

(j) If a physician employed by the district enters into an employment agreement that includes a covenant not to compete, the agreement is subject to Section 15.50, Business & Commerce Code.

(k) The board may not delegate to the chief executive officer of the district the authority to hire a physician.

(l) This section applies to medical services provided by a physician at a hospital or other health care facility owned or operated by the district.

(m) This section may not be construed as authorizing the board to supervise or control the practice of medicine as prohibited under Subtitle B, Title 3, Occupations Code.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

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(l) This section applies to medical services provided by a physician at a hospital or other health care facility owned or operated by the district.

(m) The authority granted to the board under this section to employ physicians shall apply as necessary for the district to fulfill the district's statutory mandate to provide medical care for the indigent and needy residents of the district as provided by Section 1069.101.

(n) This section may not be construed as authorizing the board to supervise or control the practice of medicine as prohibited under Subtitle B, Title 3, Occupations Code.

SECTION 4. Same as introduced version.