

BILL ANALYSIS

Senate Research Center
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S.B. 18
By: Nelson et al.
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Last session, the legislature made significant progress to address health care workforce needs by expanding graduate medical education with the goal of keeping Texas medical school graduates in Texas. The need for additional residency slots is increasing due to our growing population and higher numbers of medical school graduates as new medical schools are established in Texas.

S.B. 18 is intended to help Texas reach the goal of a 1.1-to-1 ratio of residency slots to medical graduates with a priority placed on addressing critical shortages. S.B. 18 also lays the foundation for a long-term funding solution by creating a permanent endowment of roughly \$300 million to be used solely to help expand graduate medical education starting in fiscal year 2018. The endowment will be funded through dissolution of the Texas Medical Liability Joint Underwriting Association.

As proposed, S.B. 18 amends current law relating to measures to support or enhance graduate medical education in this state, including the transfer of assets following the dissolution of the Texas Medical Liability Insurance Underwriting Association.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Higher Education Coordinating Board (THECB) in SECTION 2 (Section 58A.103, Sec. 58A.123, and 58A.153, Education Code) of this bill.

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 4 (Section 2203.452, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 58A, Education Code, by adding Section 58A.002, as follows:

Sec. 58A.002. PERMANENT FUND SUPPORTING GRADUATE MEDICAL EDUCATION. (a) Defines "trust company."

(b) Provides that the permanent fund supporting graduate medical education is a special fund in the treasury outside the general revenue fund. Provides that the fund is composed of:

- (1) money transferred or appropriated to the fund by the legislature;
- (2) gifts and grants contributed to the fund; and
- (3) the returns received from investment of money in the fund.

(c) Requires the Texas Treasury Safekeeping Trust Company (trust company) to administer the fund. Requires the trust company to determine the amount available from the fund, determined in accordance with a distribution policy that is adopted by the comptroller of public accounts of the State of Texas (comptroller) and designed to preserve the purchasing power of the fund's assets

and to provide a stable and predictable stream of annual distributions. Requires that the expenses of managing the fund's assets be paid from the fund. Prohibits money in the fund from being used for any purpose, except as provided by this section. Provides that Sections 403.095 (Use of Dedicated Revenue) and 404.071 (Disposition of Interest on Investments), Government Code, do not apply to the fund.

(d) Authorizes the trust company, in managing the assets of the fund, through procedures and subject to restrictions the trust company considers appropriate, to acquire, exchange, sell, supervise, manage, or retain any kind of investment that a prudent investor, exercising reasonable care, skill, and caution, would acquire or retain in light of the purposes, terms, distribution requirements, and other circumstances of the fund then prevailing, taking into consideration the investment of all the assets of the fund rather than a single investment.

(e) Requires that the amount available for distribution from the fund be appropriated only to fund the programs created under this chapter and any other programs designed to support or enhance graduate medical education in this state.

(f) Authorizes a public or private institution of higher education or other entity that may receive money under a program described by Subsection (e) to solicit and accept gifts and grants to the fund. Requires a gift or grant to the fund to be distributed and appropriated for the purposes of the fund subject to any limitation or requirement placed on the gift or grant by the donor or granting entity.

SECTION 2. Amends Chapter 58A, Education Code, by adding Subchapters D, E, and F, as follows:

SUBCHAPTER D. CRITICAL SHORTAGE PHYSICIAN GRANT PROGRAM

Sec. 58A.101. DEFINITIONS. Defines "center," "graduate medical residency training program," "program," and "teaching hospital."

Sec. 58A.102. ESTABLISHMENT OF PROGRAM. Requires the Texas Higher Education Coordinating Board (THECB) to establish the critical shortage physician grant program to provide grants to teaching hospitals for graduate medical residency training programs to increase the number of physicians in the medical specialties and subspecialties that are determined by THECB to be at a critical shortage level in this state.

Sec. 58A.103. RULES. (a) Requires THECB to adopt rules to administer the program, including rules regarding:

- (1) a grant application process;
- (2) reporting requirements for grant recipients; and
- (3) requirements and benchmarks for grant recipients to satisfy regarding the granting of additional program funding under Section 58A.106.

(b) Requires that the rules adopted under Subsection (a) require grant recipients to submit reports at least quarterly, based on outcome measures established by THECB in consultation with the Legislative Budget Board (LBB).

Sec. 58A.104. ELIGIBILITY. Requires a teaching hospital, to be eligible to receive a grant under this subchapter, to:

- (1) provide a number of graduate medical residency positions in excess of both the cap on the number of positions funded by direct graduate medical education payments made under Section 1886(h), Social Security Act (42 U.S.C. Section

1395ww(h)), and the cap on the number of positions funded by indirect medical education payments made under Section 1886(d)(5)(B), Social Security Act (42 U.S.C. Section 1395ww(d)(5)(B)); and

(2) offer or seek to offer one or more graduate medical residency training programs in a specialty described by Section 58.008(a) (requiring only residency positions in family practice, general internal medicine, general pediatrics, and obstetrics and gynecology to be eligible for these funds) or in any other medical specialty or subspecialty determined by THECB to be at a critical shortage level in this state.

Sec. 58A.105. **USE OF FUNDS.** Requires THECB, in each state fiscal year, to award grants for establishing new accredited graduate medical residency training programs or increasing the number of residency positions in existing accredited graduate medical residency training programs in specialties described by Section 58.008(a) or in any other medical specialties or subspecialties determined by THECB to be at a critical shortage level in this state.

Sec. 58A.106. **ADDITIONAL USE: START-UP COSTS.** (a) Authorizes THECB to grant additional program funding to teaching hospitals to pay any start-up costs associated with establishing and seeking accreditation for a new graduate medical residency training program in a specialty described by Section 58.008(a) or in any other medical specialty or subspecialty determined by THECB to be at a critical shortage level in this state provided that no other federal or state funding is available for that program if in a state fiscal year excess program funds remain after funds are granted under Section 58A.105.

(b) Requires that the start-up costs be directly related to the establishment or accreditation of the new program to be eligible for funding under this section.

(c) Authorizes THECB to grant program funding under this section to pay a percentage of the total amount of applicable start-up costs for the teaching hospital, not to exceed 20 percent.

Sec. 58A.107. **REDUCTION IN FUNDING.** Requires THECB to limit or withhold funding from grant recipients that do not comply with reporting requirements or that use grant funds for a purpose not authorized by this subchapter. Requires THECB to seek reimbursement with respect to any grant funds that are not used for purposes authorized by this subchapter.

Sec. 58A.108. **CRITERIA FOR DETERMINING CRITICAL SHORTAGE LEVELS.** (a) Requires THECB to determine critical shortage levels for medical specialties and subspecialties in this state according to criteria used by the United States Department of Health and Human Services Health Resources and Services Administration (USDA) to designate health professional shortage areas for purposes of this subchapter.

(b) Requires THECB include the results of the research conducted by the center under Section 105.009(a)(1), Health and Safety Code, and similar research performed by other appropriate entities in its methodology for determining critical shortage levels under this section.

SUBCHAPTER E. TEXAS TEACHING HEALTH CENTER GRADUATE MEDICAL EDUCATION GRANT PROGRAM

Sec. 58A.121. **DEFINITIONS.** Defines "graduate medical residency training program," "primary care residency program," "program," and "teaching health center."

Sec. 58A.122. **ESTABLISHMENT OF PROGRAM.** Requires THECB to establish the Texas teaching health center graduate medical education grant program to award grants to teaching health centers for the purpose of establishing new primary care residency

programs or increasing the number of residency positions in existing primary care residency programs.

Sec. 58A.123. RULES. (a) Requires THECB to adopt rules to administer the program, including rules regarding:

- (1) a grant application process;
- (2) reporting requirements for grant recipients under Section 58A.128; and
- (3) the amount of the payments for direct expenses and indirect expenses, as defined by and calculated in the same manner as those expenses are calculated under the federal rules described by Subsection (b).

(b) Requires that the rules adopted under this subchapter be based as nearly as possible on the rules adopted under the federal teaching health centers development grant program established under Section 5508, Patient Protection and Affordable Care Act of 2010 (Pub. L. No. 111-148).

(c) Requires that the rules adopted in relation to the reporting requirements under Section 58A.128 also:

- (1) authorize THECB to conduct audits of grant recipients to the extent necessary to ensure the accuracy and completeness of their annual reports; and
- (2) specify a mandatory amount of reduction in grant funds under Section 58A.127 for a failure to submit an accurate or complete report.

Sec. 58A.124. AMOUNT AND DURATION OF GRANT. Provides that THECB may award grants under this subchapter for a term of not more than three years, and the maximum award to a recipient may not exceed \$500,000 during each state fiscal year, subject to Section 58A.127.

Sec. 58A.125. RELATIONSHIP OF GRANTS TO OTHER FEDERAL PAYMENTS FOR GRADUATE MEDICAL EDUCATION. Provides that a grant awarded by THECB under this subchapter is in addition to any payments for:

- (1) direct graduate medical education costs under Section 1886(h), Social Security Act (42 U.S.C. Section 1395ww(h));
- (2) indirect medical education costs under Section 1886(d)(5)(B), Social Security Act (42 U.S.C. Section 1395ww(d)(5)(B)); and
- (3) direct costs of medical education under Section 1886(k), Social Security Act (42 U.S.C. Section 1395ww(k)).

Sec. 58A.126. USE OF FUNDS. Requires that a grant awarded under this subchapter be used only to cover the costs of establishing a new primary care residency program at a teaching health center or the costs of increasing the number of residency positions in an existing primary care residency program, including costs associated with:

- (1) curriculum development;
- (2) recruitment, training, and retention of residents and faculty;
- (3) obtaining accreditation by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association; and

- (4) faculty salaries during the development phase.

Sec. 58A.127. REDUCTION IN FUNDING. Requires THECB to limit or withhold funding from grant recipients that do not comply with reporting requirements or that use grant funds for a purpose not authorized by this subchapter. Requires THECB to seek reimbursement with respect to any grant funds that are not used for purposes authorized by this subchapter.

Sec. 58A.128. REPORTING. (a) Requires a grant recipient to submit an annual report that fully accounts for the use of a grant awarded under this subchapter.

(b) Requires that the annual report be made in the form and manner specified by THECB and include the following information for the most recent residency academic year completed immediately before the applicable state fiscal year:

(1) the types of primary care residency programs that the grant recipient provided for residents;

(2) the number of approved training positions in those programs for part-time or full-time residents;

(3) the number of part-time or full-time residents who:

(A) completed their residency training in those programs at the end of the residency academic year; and

(B) care for vulnerable populations living in underserved areas; and

(4) any other information considered appropriate by THECB.

SUBCHAPTER F. GRADUATE MEDICAL EDUCATION PARTNERSHIP GRANT PROGRAM

Sec. 58A.151. DEFINITIONS. Defines "graduate medical education partnership," "graduate medical residency training program," "primary care residency program," "program," and "teaching health center."

Sec. 58A.152. ESTABLISHMENT OF PROGRAM. Requires THECB to establish the graduate medical education partnership grant program to allow a teaching health center that is establishing and seeking accreditation for a new primary care residency program to partner with an accredited graduate medical residency training program offered by a hospital or medical school.

Sec. 58A.153. RULES. Requires THECB to adopt rules to administer the program, including rules regarding a grant application process and reporting requirements for grant recipients.

Sec. 58A.154. USE OF FUNDS. Requires THECB to award grants to each participant in a graduate medical education partnership to:

(1) facilitate a mentoring relationship between partners that will provide information and guidance for the participating teaching health center during the accreditation process; and

(2) assist the partners in building a collaborative working relationship for the future.

Sec. 58A.155. REDUCTION IN FUNDING. Requires THECB to limit or withhold funding from grant recipients that do not comply with reporting requirements or that use

grant funds for a purpose not authorized by this subchapter. Requires THECB to seek reimbursement for any grant funds that are not used for purposes authorized by this subchapter.

SECTION 3. Amends Chapter 105, Health and Safety Code, by adding Section 105.009, as follows:

Sec. 105.009. RESEARCH REGARDING GRADUATE MEDICAL EDUCATION SYSTEM. (a) Requires the comprehensive health professions resource center to conduct research:

(1) to identify:

(A) the ratio of primary care to non-primary care physicians that is necessary and appropriate to meet the current and future health care needs of this state; and

(B) all medical specialties and subspecialties that are at critical shortage levels in this state, together with the geographic location of the physicians in those specialties and subspecialties; and

(2) regarding the overall supply of physicians in this state and any other issues that are relevant to the status of the state's graduate medical education system and the ability of that system to meet the current and future health care needs of this state.

(b) Requires the statewide health coordinating council to report the results of the center's research to the LBB, THECB, the office of the governor, and the standing committees of each house of the legislature with primary jurisdiction over state finance or appropriations, not later than August 31 of each even-numbered year.

SECTION 4. Amends Chapter 2203, Insurance Code, by adding Subchapter J, as follows:

SUBCHAPTER J. DISSOLUTION OF ASSOCIATION; REACTIVATION OF ASSOCIATION BY COMMISSIONER

Sec. 2203.451. DISSOLUTION DATE. Requires the joint underwriting association (association) to cease all operations before and provides that it is dissolved on August 31, 2017.

Sec. 2203.452. DISSOLUTION PLAN. (a) Requires the board of directors of the association, in consultation with the Texas Department of Insurance (TDI), to develop a dissolution plan to:

(1) wind down and cease the association's operations before the dissolution date established by this subchapter; and

(2) transfer to the commissioner of insurance (commissioner) and TDI:

(A) any obligations of the association that survive the association's dissolution;

(B) any rights of the association that:

(i) accrued before the association's dissolution and survive the association's dissolution; or

(ii) accrue after the association's dissolution with respect to coverage issued by the association before the association's dissolution;

(C) any authority previously held by the association the continuation of which is necessary or appropriate; and

(D) subject to Section 2203.456, any association assets.

(b) Authorizes the dissolution plan to provide that the obligations, rights, authority, and, subject to Section 2203.456, assets transferred to the commissioner and TDI to be transferred to a liquidator appointed by the commissioner.

(c) Requires that the dissolution plan be adopted by the commissioner by rule.

Sec. 2203.453. ISSUANCE AND RENEWAL OF INSURANCE COVERAGE; TERMINATION OF POLICIES. Prohibits the association from issuing or renewing an insurance policy on or after the effective date of this subchapter. Requires that a policy issued or renewed by the association before that date continue in force until terminated in accordance with the terms and conditions of the policy.

Sec. 2203.454. ACCEPTANCE AND DISPOSITION OF CLAIMS. (a) Authorizes the association to continue to accept claims under association policies until:

(1) the dissolution date established by this subchapter; or

(2) an earlier claims acceptance deadline established in the dissolution plan.

(b) Requires that the dissolution plan establish processes to ensure that, to the maximum extent reasonably possible, claims made under association policies before the dissolution date established by this subchapter are processed and paid or otherwise appropriately disposed of before the dissolution date established by this subchapter.

(c) Requires that the dissolution plan provide that TDI or a liquidator appointed in accordance with the dissolution plan will:

(1) take over the processing and disposition of any claims under association policies accepted by the association that are outstanding on the dissolution date established by this subchapter; and

(2) accept, process, and dispose of any claims under association policies that are made after the latest date on which the association accepts claims under Subsection (a).

Sec. 2203.455. POST-DISSOLUTION CLAIMS. (a) Requires that the dissolution plan provide for a reasonable and actuarially sound arrangement, through retention of reserves, purchase of reinsurance, or otherwise, to ensure that sufficient resources remain available to pay liability of the association that may arise in connection with claims made under association policies on or after the dissolution date established by this subchapter.

(b) Requires that the claims that cannot be satisfied be treated as claims against an insolvent insurer liquidated under Chapter 443 (Insurer Receivership Act), if the arrangement provided under Subsection (a) proves inadequate.

Sec. 2203.456. TRANSFER OF ASSETS. (a) Requires that association assets not retained by TDI under Subsection (b) or otherwise transferred or applied in accordance with this section be transferred to the permanent fund supporting graduate medical education established under Section 58A.002 (Planning Grants), Education Code, not later than October 1, 2017.

(b) Requires TDI retain to assets sufficient to pay claims under association policies that are outstanding on the asset transfer date established by Subsection

(a). Requires TDI to retain, transfer, or apply association assets as necessary for the portion of the dissolution plan required by Section 2203.455(a).

(c) Authorizes TDI to transfer assets to the liquidator in accordance with the dissolution plan if a liquidator is appointed under the dissolution plan.

(d) Requires that the assets of the policyholder's stabilization reserve fund for nursing homes and assisted living facilities established under Section 2203.303 (Policyholder's Stabilization Reserve Fund for Nursing Homes and Assisted Living Facilities) be transferred to the general revenue fund to be appropriated as provided by Section 2203.303(e) (requiring all assets of the fund to be transferred to the general review fund to be appropriated for purposes related to ensuring the provision of the kinds of liability insurance coverage that the association may provide under this chapter to nursing homes and assisted living facilities).

Sec. 2203.457. ANNUAL REPORT. Requires TDI to, after the transfer date established by Section 2203.456(a), as part of each annual report made under Section 32.021 (Annual Reports):

(1) account for assets retained under Section 2203.456(b) or transferred under Section 2203.456(c) or (d); and

(2) report on the receipt, processing, and disposition of claims under association policies.

Sec. 2203.458. REACTIVATION OF ASSOCIATION. (a) Authorizes the commissioner to order the reactivation of the association and authorizes the association to resume operations in accordance with the provisions of this chapter other than this subchapter after the dissolution of the association and the transfer of the association's assets in accordance with this subchapter.

(b) Requires that a hearing to determine the need to reactivate the association be held:

(1) on petition of:

(A) the Texas Medical Association;

(B) the Texas Podiatric Medical Association;

(C) the Texas Hospital Association; or

(D) at least 15 physicians or health care providers practicing or operating in this state; or

(2) on a finding by the commissioner that physicians or health care providers, or any category of physicians or health care providers, in this state are threatened with the possibility of being unable to secure medical liability insurance.

(c) Requires that notice of the hearing be given to each insurer that would be a member of the association under Section 2203.055 (Joint Underwriting Association Membership) if the association were reactivated, not later than the 15th day before the date set for a hearing under this section.

(d) Requires the commissioner to order the reactivation of the association, if the commissioner finds the reactivation of the association is in the public interest. Requires the commissioner to consider the potential impact on and harm or benefit to consumers of health care, physicians and health care providers, and the

overall availability of medical liability insurance in this state, in making a determination under this section. Requires that the order:

(1) designate the category or categories of physicians or health care providers who are eligible to secure medical liability insurance coverage from the association; and

(2) specify a date that is not fewer than 15 or more than 60 days after the date of the order on which the provisions of this chapter other than this subchapter become effective.

(e) Requires that if an order of reactivation is made under this section, the provisions of this chapter other than this subchapter take effect as if they had been enacted into law with the effective date specified in the commissioner's order.

(f) Requires that the commissioner's order specify a deadline for the initial election and appointment of members of the board of directors under Section 2203.052 (Board of Directors). Provides that the initial term for each director elected or appointed under this section expires on the first October 1 that follows the election and appointment deadline specified in the order, notwithstanding Section 2203.052.

Sec. 2203.459. DISSOLUTION AFTER REACTIVATION. (a) Authorizes the commissioner, after notice and hearing, to order the dissolution of the association after reactivation of the association under Section 2203.458. Requires that the dissolution of the association under this section be done in accordance with the provisions of this subchapter that governed the dissolution of the association on the dissolution date established by Section 2203.451.

(b) Requires that a hearing to determine whether to dissolve the association under this section be held only at the commissioner's discretion.

(c) Requires the commissioner to issue an order to dissolve the association under this section if the commissioner finds that:

(1) there is no category of physicians or health care providers in this state threatened with the possibility of being unable to secure medical liability insurance; and

(2) dissolution of the association is in the public interest.

(d) Requires the commissioner to consider the potential impact on and harm or benefit to consumers of health care, physicians and health care providers, and the overall availability of medical liability insurance in this state in making a determination under Subsection (c) (2).

(e) Requires that the commissioner's order:

(1) prescribe:

(A) a dissolution date;

(B) a date on and after which the association may not issue or renew insurance policies; and

(C) an asset transfer date; and

(2) direct the board of directors to develop a dissolution plan in accordance with this subchapter.

(f) Requires that a dissolution plan developed under this section be adopted by the commissioner by rule.

(g) Requires association assets not retained by TDI or otherwise transferred or applied in accordance with Section 2203.456(b) or (c) be transferred to the general revenue fund on the asset transfer date prescribed by the commissioner's order. Requires TDI to report on assets and claims as prescribed by Section 2203.457.

SECTION 5. Amends Sections 2203.303(d) and (e), Insurance Code, as follows:

(d) Requires that the policyholder's stabilization reserve fund under this section be terminated only by law. Deletes a reference in this provision to notwithstanding Sections 11, 12, and 13, and Article 21.49-3.

(e) Requires that all assets of the fund be transferred to the general revenue fund to be appropriated for purposes related to ensuring the provision of the kinds of liability insurance coverage that the association may provide under this chapter to nursing homes and assisted living facilities on termination of the policyholder's stabilization reserve fund under this section. Deletes a reference in this provision to notwithstanding Section 11, Article 21.49-3.

SECTION 6. Repealers: Articles 21.49-3 (Medical Liability Insurance Underwriting Association Act) and 21.49-3a (Reactivation of Joint Underwriting Associations), Insurance Code.

SECTION 7. (a) Requires THECB to adopt rules for the critical shortage physician grant program, the Texas teaching health center graduate medical education grant program, and the graduate medical education partnership grant program established under Subchapters D, E, and F, Chapter 58A, Education Code, respectively, as added by this Act, not later than December 31, 2015.

(b) Requires THECB to award grants under the programs described by Subsection (a) of this section beginning with the 2016-2017 state fiscal year.

SECTION 8. Effective date: upon passage or September 1, 2015.