

BILL ANALYSIS

Senate Research Center
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H.B. 1532
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The corporate practice of medicine (CPOM) doctrine was developed by the American Medical Association in the 19th century to protect the integrity of the medical profession in several ways, first by distinguishing between professional physicians and unqualified persons seeking to offer medical care, and, second, by restricting corporate influence on a physician's independent medical judgment. The doctrine in different iterations was incorporated into the laws of various states, and while many states have abandoned CPOM, Texas maintains the doctrine as a means to insulate the doctor-patient relationship from pecuniary pressures.

Interested parties note that state law requires the chief medical officer of the health care organization to immediately report to the board any instance in which the chief medical officer reasonably believes a physician's independent medical judgment was compromised or a physician was punished for reasonably advocating patient care. The parties contend that in practice some chief medical officers have failed to report such matters to the board and that, as a result, physicians have been punished for reasonably advocating medical care for their patients. Unfortunately, the physician's professional and economic livelihood may have already been compromised through the chief medical officer's failure to report a matter, leaving the physician with no recourse to remedy the situation. H.B. 1532 seeks to address this issue.

H.B. 1532 requires the Texas Medical Board to accept and process complaints against a health organization certified under Section 162.001(b) for alleged violations of the corporate practice of medicine act. S.B. 1985 also requires health organizations certified under Section 162.001(b) to file a biennial report with the Texas Medical Board that must include certain information about the administration of the organization and the organization's executives.

H.B. 1532 amends current law relating to the regulation of certain health organizations certified by the Texas Medical Board; provides an administrative penalty; and authorizes a fee.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Medical Board in SECTION 2 (Section 162.006, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 162.003, Occupations Code, as follows:

Sec. 162.003. REFUSAL TO CERTIFY; REVOCATION; PENALTY. Authorizes the Texas Medical Board (TMB), on a determination that a health organization commits a violation of this subtitle (Physicians) or is established, organized, or operated in violation of or with the intent to violate this subtitle to perform certain tasks, rather than authorizing 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 perform certain tasks.

SECTION 2. Amends Subchapter A, Chapter 162, Occupations Code, by adding Sections 162.004, 162.005, and 162.006, as follows:

Sec. 162.004. PROCEDURES FOR AND DISPOSITION OF COMPLAINTS AGAINST CERTAIN HEALTH ORGANIZATIONS. (a) Requires TMB to accept and process complaints against a health organization certified under Section 162.001(b) (relating to requiring TMB to approve and certify a health organization that meets certain criteria) for alleged violations of this subchapter or any other provision of this subtitle applicable to a health organization in the same manner as provided under Subchapter B (Complaint Procedures), Chapter 154, and the rules adopted under that subchapter, including the requirements to:

(1) maintain a system to promptly and efficiently act on complaints filed with TMB;

(2) with respect to a health organization that is the subject of a complaint, notify the health organization that a complaint has been filed, disclose the nature of the complaint, and provide the health organization with an opportunity to respond to the complaint;

(3) ensure that a complaint is not dismissed without appropriate consideration; and

(4) establish methods by which physicians employed by a health organization are notified of the name, mailing address, and telephone number of TMB for the purpose of directing complaints under this section to TMB.

(b) Provides that each complaint, adverse report, investigation file, other investigation report, and other investigative information in the possession of or received or gathered by TMB or TMB's employees or agents relating to a health organization certified under Section 162.001(b) is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than TMB or TMB's employees or agents involved in the investigation or discipline of a health organization certified under Section 162.001(b).

(c) Authorizes TMB to dispose of a complaint or resolve the investigation of a complaint under this section in a manner provided under Subchapter A (General Provisions), Chapter 164, to the extent TMB determines the provisions of that subchapter can be made applicable to a health organization certified under Section 162.001 (Certification by Board).

(d) Provides that this section does not require an individual to file or prohibit an individual from filing a complaint against a health organization certified under Section 162.001(b) directly with the health organization, alone or in connection with a complaint filed with TMB under this section, relating to:

(1) the care or services provided by, or the policies of, the health organization; or

(2) an alleged violation by the health organization of this subchapter or any other provision of this subtitle applicable to the health organization.

Sec. 162.005. ANTI-RETALIATION POLICY. (a) Requires a health organization certified under Section 162.001(b) to develop, implement, and comply with an anti-retaliation policy for physicians under which the health organization may not terminate, demote, retaliate against, discipline, discriminate against, or otherwise penalize a physician for:

(1) filing in good faith a complaint under Section 162.004;

(2) cooperating in good faith with an investigation or proceeding of TMB relating to a complaint filed under Section 162.004; or

(3) communicating to a patient in good faith what the physician reasonably believes to be the physician's best, independent medical judgment.

(b) Authorizes TMB, on a determination that a health organization certified under Section 162.001(b) has failed to develop, implement, or comply with a policy described by Subsection (a), to take any action allowed under this subtitle or TMB rule applicable to a health organization.

Sec. 162.006. BIENNIAL REPORT REQUIRED FOR CERTAIN HEALTH ORGANIZATIONS. (a) Requires each health organization certified under Section 162.001(b) to file with TMB a biennial report in September of each odd-numbered year if the organization was certified in an odd-numbered year or in September of each even-numbered year if the organization was certified in an even-numbered year. Requires the biennial report to include:

(1) a statement signed and verified by the president or chief executive officer of the health organization that:

(A) provides the name and mailing address of:

(i) the health organization;

(ii) each member of the health organization, except that if the health organization has no members, a statement indicating that fact;

(iii) each member of the board of directors of the health organization; and

(iv) each officer of the health organization; and

(B) discloses any change in the composition of the board of directors since the date of the most recent biennial report;

(2) a statement signed and verified by the president or chief executive officer of the health organization that:

(A) indicates whether the health organization's certificate of formation or bylaws were amended since the date of the most recent biennial report;

(B) if applicable, provides a concise explanation of the amendments and states whether the amendments were recommended or approved by the board of directors; and

(C) has attached to the statement a copy of the organization's current certificate of formation and bylaws if a copy is not already on file with TMB;

(3) a statement from each current director of the health organization, signed and verified by the director:

(A) stating that the director is licensed by TMB to practice medicine, is actively engaged in the practice of medicine, and has no restrictions on the director's license;

(B) stating that the director will, as a director:

(i) exercise independent judgment in all matters, specifically including matters relating to credentialing, quality assurance, utilization review, peer review, and the practice of medicine;

(ii) exercise best efforts to cause the health organization to comply with all relevant provisions of this subtitle and TMB rules; and

(iii) immediately report to TMB any action or event the director reasonably and in good faith believes constitutes a violation or attempted violation of this subtitle or TMB rules;

(C) identifying and concisely explaining the nature of each financial relationship the director has, if any, with a member, another director, or a supplier of the health organization or an affiliate of those persons; and

(D) stating that the director has disclosed all financial relationships described by Paragraph (C); and

(4) a statement signed and verified by the president or chief executive officer of the health organization indicating that the health organization is in compliance with the requirements for continued certification provided by this subtitle and TMB rules.

(b) Requires a health organization required to submit a biennial report under Subsection (a) to submit with the report a fee in the amount prescribed by TMB rule.

(c) Requires TMB, not later than January 1 of each year, to publish on TMB's Internet website the information provided to TMB in each statement under Subsection (a)(1).

(d) Provides that information provided to TMB in each statement under Subsections (a)(2), (3), and (4) is public information subject to disclosure under Chapter 552, Government Code.

(e) Authorizes TMB to adopt rules necessary to implement this section.

SECTION 3. Makes application of Section 162.003, Occupations Code, as amended by this Act, and Section 162.004, Occupations Code, as added by this Act, prospective.

SECTION 4. Requires a health organization certified under Section 162.001(b), not later than December 31, 2019, to develop the anti-retaliation policy required by Section 162.005, Occupations Code, as added by this Act.

SECTION 5. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2019.

(b) Effective date, Section 162.005(b), Occupations Code, as added by this Act: January 1, 2020.