

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION**

**May 5, 2021**

**TO:** Honorable Bryan Hughes, Chair, Senate Committee on State Affairs

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: SB1669** by Hall (Relating to prohibited discrimination regarding vaccination status and mandates for receiving or participating in the administration of vaccines; authorizing administrative penalties.), **As Introduced**

**The fiscal implications of the bill are dependent on the number of allegations that an individual's rights are being violated, the number of lawsuits the Office of the Attorney General chooses to pursue, the schedule of administrative penalties, and the number of violations subject to administrative penalties. The level of non-compliance with the provisions of the bill and the affect of the bill's provisions on public health outcomes and the associated cost increases are unknown. As a result, the fiscal implications of the bill cannot be determined.**

This bill would prohibit discrimination against persons who have not been vaccinated for communicable diseases. The bill would prohibit disparate treatment for non-vaccinated persons in areas including public accommodation, employment, receipt of benefits, enrollment in health plans, admission to health care facilities, and professional licensure.

The bill would prohibit any person from refusing to provide a "public accommodation" to any individual based on the individual's vaccine history or immunity status. The bill would also prohibit disparate or separate treatment of individuals based on their vaccination history. If an individual believed that a person violated the anti-discrimination provisions of the legislation, the individual could file a complaint with the Office of Attorney General (OAG). If the OAG determined that a complaint was valid, then the OAG would be authorized to file suit against the alleged offender to seek equitable relief requiring the person to comply with the anti-discrimination provisions of the legislation. According to OAG, because the basis for citizen complaints is extensive, it is anticipated that the OAG would receive numerous complaints from individuals asserting that they have been discriminated against for vaccination status. Each of these complaints would require individual review to assess their validity. Additionally, the OAG would likely determine that some complaints were valid. In these instances, the OAG would be authorized to file suit. Authority to file suit is discretionary, so the OAG could limit its enforcement actions to appropriate circumstances.

The bill would amend Chapter 161 of the Health and Safety Code to prohibit a long-term care facility from refusing to provide services to a resident based on the resident's immunization record or immunity status for a communicable disease. A long-term care facility that violates this provision would be prohibited from receiving state money for services provided to residents. A violation of this provisions would also constitute a violation of the long-term care facility's applicable licensing law and would subject the facility to disciplinary action and the imposition of administrative penalties.

A health care provider or health care facility would be required to provide health care services to an individual regardless of the individual's vaccination status. A health care provider or facility that violates this provision would be prohibited from receiving state money for services provided to patients. A violation of this provisions would also constitute a violation of the health care provider or facility's applicable licensing law and would subject the provider or facility to disciplinary action and the imposition of administrative penalties.

The schedule of administrative penalties and number of violations subject to administrative penalty are both

unknown; therefore, the fiscal impact on the state cannot be determined.

The bill would amend Chapter 544 of the Insurance Code to prohibit a group health benefit plan issuer or a life insurance company from using an individual's vaccination history or immunity status for a communicable disease to reject, deny, limit, cancel, refuse to renew, or increase the premiums for coverage of the individual; limit the amount, extent, or kind of coverage available to the individual; or otherwise adversely affect the individual's eligibility for coverage. The vaccination history or immunity status for a communicable disease for individuals covered under a group health benefit plan that provides coverage in this state may not be used as a factor in the rating of the plan.

Implementing the provisions of the bill would prohibit vaccination history or immunity status for a communicable disease of individuals covered under Medicaid and CHIP to be used as a factor in the rating of Managed Care Organizations (MCOs). This bill would also prohibit MCOs from providing a financial incentive or assessing a financial or other penalty based on vaccination history and immunity status for a communicable disease of enrollees. This change applies to a contract entered on or after September 1, 2021. This will impact the Health and Human Services Commission's (HHSC) contract with its External Quality Review Organization (EQRO) to remove all vaccine measures from all quality initiatives, as well as remove them from the Texas Healthcare Learning Collaborative Portal. HHSC may replace these measures with new measures. However, HHSC will need additional time to analyze whether these new measures are needed. EQRO has indicated this cost can be absorbed with existing resources.

Removal of MCO ratings, accountability provisions, incentives, or penalties described in the bill could lead to a decrease in vaccination rates and an increase in potentially preventable infections or diseases. The fiscal impact cannot be estimated at this time.

According to HHSC, implementing the provisions of the bill could also lead to a decrease in vaccination rates and an increase in potentially preventable infections or diseases within state operated facilities, such as state hospitals and State Supported Living Centers. The fiscal impact cannot be estimated at this time.

The bill would amend Chapter 21 of the Labor Code to provide that an employer, labor organization, or employment agency commits an unlawful employment practice if the entity segregates, or classifies an employee, member, or applicant for employment or membership in a way that would deprive the individual of employment opportunities or otherwise adversely affect the status of the individual because the individual is unvaccinated or not immune to a communicable disease.

The Workforce Commission is unable to estimate additional workload that would result from implementing the provisions of the bill because the number of Texans who may not get vaccinations and how many employers may attempt to require vaccinations under present law with guidance from the US Equal Employment Opportunities Commission is unknown.

The bill would add Chapter 103A to the Occupations Code to provide that a health care facility may not require as a condition of employment that an employee be vaccinated or participate in administering a vaccine. A health care facility would be prohibited from discriminating against an employee who refuses to be vaccinated or participate in administering a vaccine, or who is not immune to a communicable disease. An educational institution would be prohibited from discriminating against an applicant for admission or employment on the basis of the applicant's vaccination history or immunity status for a communicable disease or the applicant's refusal to be vaccinated or participate in administering a vaccine. The bill provides for remedies for an individual who is aggrieved by a violation of this chapter.

The bill would amend Chapter 161 of the Health and Safety Code to prohibit a governmental entity or official from requiring an individual to be vaccinated, requiring an individual to participate in the administration of a vaccine, or discriminate or impose a civil or criminal penalty against an individual who refuses vaccination or participation in the administration of a vaccine.

According to the Department of State Health Services (DSHS), if staff decline to participate in vaccine administration, DSHS would pay for staff from another region to travel to perform the function. DSHS primarily provides public health services in rural field clinics with minimal staffing. As a result transferring staff to another region may temporarily decrease clinic services in the travelling staff's home region.

DSHS would continue to collect vaccine administration fees as appropriate at its regional clinics. Removing immunization requirements could result in DSHS administering fewer immunizations, and therefore collect less revenue. The potential decrease in revenue cannot be estimated.

DSHS assumes that removing requirements for immunization of staff would potentially result in increased disease transmission among DSHS staff and between DSHS staff and clients, including vulnerable populations. It is also assumed that removing requirements for immunization of healthcare staff would result in increased rates of disease transmission in healthcare settings, including in DSHS clinics and TCID. DSHS may experience increased costs related to workers compensation payments for employees infected on the job or related to client/patient infections from DSHS staff. DSHS cannot estimate the costs associated with these increases in disease.

### **Local Government Impact**

The fiscal implications of the bill cannot be determined at this time.

**Source Agencies:** 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 320 Texas Workforce Commission, 529 Hlth & Human Svcs Comm, 537 State Health Services, 701 Texas Education Agency, 710 Texas A&M Univ System Admin, 720 UT Sys Admin

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