

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 666
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Lack of transparency, failure to protect patients from rogue physicians, and penalizing physicians for routine patient care are just some of the issues plaguing the Texas Medical Board (TMB).

Currently, any individual, entity, or TMB itself, can file a confidential complaint against a physician, even though no harm was done and the patient who received the care had no issue with the care received. Physicians under investigation usually have to pay hundreds or even thousands of dollars in attorney's fees and spend many hours away from treating patients to respond to the investigation.

Also, filing frivolous lawsuits against a physician for no cause is one way TMB is weaponized by those who disagree with the use of alternative treatment methods or those who have a personal vendetta against another physician. Because TMB must act on all complaints within their jurisdiction, and physicians must respond or face having investigations reflected on their licensing record, it places a huge financial and time-consuming burden on physicians and can jeopardize a physician's livelihood, regardless of whether or not the physician harmed a patient.

This bill:

- requires that confidential complaints are submitted on notarized, sworn statements;
- allows only the patient, or those directly involved in their care, and those with direct knowledge of the issue to file complaints;
- requires TMB to provide a copy of the complaint to the physician, unless the complaint is confidential;
- requires individuals who were not directly involved in the care of the patient to submit complaints on a notarized, sworn statement;
- makes changes to the review panel by requiring that eight practicing physicians from similar areas of practice to make up the review panel for physicians subject to complaints regarding medical competency;
- requires the review panel to independently review the complaint and a three-fourth's vote to take disciplinary action against the physician;
- prevents a physician from being investigated again for the same allegation for the same instance once TMB dismisses a case;
- requires that TMB rules go through a formal rulemaking process that includes public input, except for emergency rules; and
- requires that investigations be completed within 120 days, allowing for one 30-day extension.

C.S.S.B. 666 amends current law relating to complaint information and to rulemaking and disciplinary procedures of the Texas Medical Board.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Medical Board is modified in SECTION 1 (Section 153.001, Occupations Code) and SECTION 8 (Section 164.007, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 153.001, Occupations Code, as follows:

Sec. 153.001. ADOPTION OF RULES. (a) Creates this subsection from existing text.

(b) Requires the Texas Medical Board (TMB), notwithstanding any other law and except as otherwise provided by this subsection, to hold a public hearing with a public comment period on a proposed rule before adopting the rule. Provides that this subsection does not apply to an emergency rule adopted or renewed in accordance with Section 2001.034 (Emergency Rulemaking), Government Code.

SECTION 2. Amends Section 154.051, Occupations Code, by amending Subsections (a), (b), and (c) and adding Subsection (d-2), as follows:

(a) Requires the Texas Medical Board (TMB) by rule to establish methods by which members of the public and license holders are notified of the name, mailing address, and telephone number of TMB for the purpose of obtaining information about complaint procedures and directing complaints to TMB.

(b) Requires TMB to list with its regular telephone number any toll-free telephone number established under other state law that may be called to obtain information about how to present a complaint about a health professional.

(c) Prohibits a person, including a partnership, association, corporation, or other entity, from filing a complaint against a license holder with TMB unless the person:

(1) is:

(A) a patient of the license holder; or

(B) directly involved in the care of a patient of the license holder and the complaint concerns the license holder's provision of care to that patient; or

(2) is not a person described by Subdivision (1) and has direct knowledge of the incident that is the subject of the complaint.

Deletes existing text authorizing TMB to file a complaint on its own initiative.

(d-2) Authorizes TMB, notwithstanding Subsections (d) and (d-1), to consider or act on a complaint involving conduct that constitutes a criminal offense at any time before the expiration of the applicable statute of limitations for the offense.

SECTION 3. Amends Subchapter B, Chapter 154, Occupations Code, by adding Section 154.0511, as follows:

Sec. 154.0511. FORM OF CERTAIN COMPLAINTS. Prohibits TMB from accepting or taking action regarding, or requiring a license holder to respond to, a complaint filed with TMB by a person described by Section 154.051(c)(2) unless the complaint is in writing and includes:

(1) the name of the complainant; and

(2) a sworn affidavit that states that all of the facts asserted in the complaint are true and based on personal knowledge of the physician's care of a patient identified in the complaint and that is executed before a notary public under penalty of perjury.

SECTION 4. Amends Section 154.053, Occupations Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Requires TMB, except as provided by Subsection (a-1), to notify a physician who is the subject of a complaint filed with TMB that a complaint has been filed and to provide the physician with a complete copy of the complaint, including the name of the complainant. Deletes existing text requiring TMB to notify the physician of the nature of the complaint, unless the notice would jeopardize an investigation. Makes nonsubstantive changes.

(a-1) Requires TMB to redact the name of the complainant from the complete copy of the complaint provided to the physician under Subsection (a) if the complaint filed with TMB is in writing and includes:

(1) the name of the complainant; and

(2) a sworn affidavit that states that all of the facts asserted in the complaint are true and based on personal knowledge of the physician's care of a patient identified in the complaint and is executed before a notary public under penalty of perjury.

SECTION 5. Amends Section 154.056, Occupations Code, by adding Subsections (b-1), (b-2), (b-3), (b-4), and (b-5) and amending Subsection (e), as follows:

(b-1) Requires TMB to complete the investigation of a complaint not later than the 120th day after the date the complaint is filed with TMB, except that TMB is authorized to extend the period for investigating the complaint for an additional 30 days if extenuating circumstances prevent the completion of the investigation within the 120-day period.

(b-2) Prohibits TMB, in conducting an investigation of a complaint filed with TMB, from investigating matters that are outside of the scope of the filed complaint. Provides that this subsection applies at all times before the resolution of the complaint, including during the initial investigation period and any informal proceeding or disciplinary hearing.

(b-3) Prohibits TMB, except as provided by Subsection (b-4), from investigating a complaint involving a violation alleged to have occurred more than three years before the date the complaint is filed.

(b-4) Prohibits TMB from investigating a complaint that alleges a violation involving care provided to a person who was 17 years of age or younger at the time of the alleged violation unless the complaint is filed on or before the person's 20th birthday.

(b-5) Authorizes TMB, notwithstanding Subsections (b-3) and (b-4), to investigate a complaint that alleges a violation involving conduct constituting a criminal offense as provided by Section 154.051(d-2).

(e) Requires each member of the expert physician panel to be a physician licensed in this state and engaged in the active practice of medicine, rather than to be licensed to practice medicine in this state.

SECTION 6. Amends Section 154.058, Occupations Code, as follows:

Sec. 154.058. New heading: EXPERT PHYSICIAN REVIEW AND DETERMINATION OF MEDICAL COMPETENCY. (a) Requires that each complaint against a physician that requires a determination of medical competency be reviewed initially by a TMB member, consultant, or employee, rather than a TMB member, consultant, or employee with a medical background considered sufficient by TMB. Requires a TMB member, consultant, or employee who reviews a complaint under this subsection to be a physician licensed in this state and engaged in the active practice of medicine.

(b) Requires that the complaint, if the initial review under Subsection (a) indicates that an act by a physician may fall below an acceptable standard of care, be reviewed by at least eight expert physician reviewers who:

(1) are selected from the expert physician panel authorized under Section 154.056(e); and

(2) have an active practice in the same specialty as the physician who is the subject of the complaint.

Deletes existing text requiring that the complaint, if the initial review under Subsection (a) indicates that an act by a physician falls below an acceptable standard of care, be reviewed by an expert physician panel authorized under Section 154.056(e) consisting of physicians who practice in the same specialty as the physician who is the subject of the complaint or in another specialty that is similar to the physician's specialty.

(b-1) Provides that the physician who is the subject of the complaint is entitled to strike any expert physician panel member from participating in the review under Subsection (b) if the subject physician is aware that the panel member's participation represents a conflict of interest, including a situation in which the subject physician and the panel member live or work in the same geographical area or are competitors.

(b-2) Requires each expert physician panel member reviewing a complaint under this section to:

(1) be provided separate copies of the complaint information; and

(2) before communicating with another expert physician reviewer, independently review the complaint information and form an opinion as to whether an act by the physician who is the subject of the complaint falls below an acceptable standard of care.

(b-3) Requires the expert physician reviewers, after each expert physician panel member selected under Subsection (b) independently reviews the complaint information and forms an opinion as described by Subsection (b-2)(2), to vote on the question of whether an act by the physician who is the subject of the complaint falls below an acceptable standard of care.

(c) Requires the expert physician reviewers, rather than panel, to report in writing the reviewers' determinations based on the review of the complaint under Subsection (b), including the results of the vote under Subsection (b-3). Makes conforming changes.

(d) Prohibits TMB, notwithstanding any other law, from taking any disciplinary action against a physician who is the subject of a complaint reviewed under this section unless the expert physician reviewers determined by a three-fourths vote under Subsection (b-3) that an act by the subject physician falls below an acceptable standard of care. Requires TMB, if the expert physician reviewers do not determine by a three-fourths vote that the act falls below an acceptable standard of care, to dismiss the reviewed complaint with prejudice.

SECTION 7. Amends Sections 164.003(f) and (i), Occupations Code, as follows:

(f) Requires that the notice, if the complaint includes an allegation that the license holder has violated the standard of care, include a copy of the report prepared under Section 154.058(c), rather than a copy of each report prepared by an expert physician reviewer under Section 154.0561 (Procedures for Expert Physician Review).

(i) Authorizes any person participating in the informal settlement conference proceeding to make a recording of the proceeding. Authorizes a recording made under this subsection to be used in any subsequent legal proceeding. Deletes existing text requiring TMB, on request by a physician under review, to make a recording of the informal settlement conference proceeding. Deletes existing text providing that the recording is a part of the investigative file and is prohibited from being released to a third party unless authorized under Subtitle B (Physicians). Deletes existing text authorizing TMB to charge the physician a fee to cover the cost of recording the proceeding.

SECTION 8. Amends Section 164.007(a), Occupations Code, to delete existing text requiring TMB, after receiving the administrative law judge's findings of fact and conclusions of law, to appeal the administrative law judge's findings of fact and conclusions of law in the manner provided by Section 164.0072 (Board Appeal of Findings of Fact and Conclusions of Law).

SECTION 9. Repealers: Section 154.0561 (Procedures for Expert Physician Review) and Section 164.0072 (Board Appeal of Findings of Fact and Conclusions of Law), Occupations Code.

SECTION 10. Requires TMB, not later than the 30th day after the effective date of this Act, to adopt rules as necessary to implement the changes in law made by this Act.

SECTION 11. Makes application of this Act prospective to the 30th day after the effective date of this Act.

SECTION 12. Effective date: upon passage or September 1, 2023.