

BILL ANALYSIS

Senate Research Center

S.B. 820
By: Kolkhorst
Health & Human Services
5/23/2023
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The vision care industry is currently being consolidated and integrated just as other healthcare industries are, such as medicine and dentistry. Optometrists can only be self-employed or employed by another optometrist or physician. Recently, corporate entities, through business agreements, are controlling many aspects of optometric practice or, in some cases, all of the operational aspects of the practice. Current law established by the Texas Legislature states that the Texas Optometry Board (TOB) has oversight of licensed optometrists and the quality of care they provide to patients and that corporations can not control the practice of optometry.

These business agreements obscure aspects of the optometry practice not only to patients but to the TOB and to the state. This creates an environment where the corporation's financial motivations risk superseding the patient's best interests or potentially impacting government assistance insurance programs such as Medicaid in an improper manner. When complaints arise, or investigations are needed, these corporations and their participants need to be able to be identified and held accountable.

C.S.S.B. 820 is modeled closely after an existing statute signed into law in 2015, Chapter 73 Business & Commerce Code, regarding dental support organizations (DSOs) and similar happenings in the dental industry.

The committee substitute addresses concerns brought to the committee by those within the vision care industry. The committee substitute adds group purchasing services to the list of products and services included under this bill, changes the correction registration deadline to semiannually instead of quarterly, and adds that the Texas Optometry Board may not adopt rules to limit an optometrist from contracting with a VSO for business support services that are legally permissible.

Support:
Optometric care patients
Texas Optometric Association

Oppose:
Vision MMCOs

S.B. 820 amends current law relating to the registration of vision support organizations, imposes a fee, requires an occupational registration, and provides a civil penalty.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle A, Title 5, Business and Commerce Code, by adding Chapter 74, as follows:

CHAPTER 74. REGISTRATION OF VISION SUPPORT ORGANIZATIONS

Sec. 74.001. DEFINITIONS. Defines "business support services," "optometrist," and "vision support organization."

Sec. 74.002. REGISTRATION REQUIRED. (a) Requires a vision support organization to annually register with the secretary of state (SOS).

(b) Provides that a vision support organization's registration under this section is considered registration of any subsidiary, contractor, or affiliate of the vision support organization through or with which the vision support organization provides business support services if the registration includes all required information from each subsidiary, contractor, or affiliate of the vision support organization as if that entity had filed individually.

Sec. 74.003. EXEMPTIONS. Provides that this chapter does not require registration by:

- (1) an accountant providing only accounting services;
- (2) an attorney providing only legal counsel;
- (3) an insurance company or insurance agent providing only insurance policies to a business;
- (4) entities providing only investment and financial advisory services;
- (5) an accredited college of optometry or college of medicine in this state;
- (6) an optometrist licensed by the Texas Optometry Board (TOB) or a physician licensed by the Texas Medical Board who has an ownership interest in three or fewer locations;
- (7) a community health center, as defined by Section 351.367(a) (relating to defining "community health center"), Occupations Code; and
- (8) a nonprofit corporation governed by Chapter 22 (Nonprofit Corporations), Business Organizations Code, and exempt from taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code, that performs eye care services primarily for homeless, migrant, indigent, or medically underserved populations.

Sec. 74.004. CONTENTS OF REGISTRATION; FEE. (a) Requires that the registration required by Section 74.002 include:

- (1) the name and business address of the vision support organization;
- (2) the name and business address of each optometrist and each entity that employs or contracts with an optometrist to provide eye care services in this state with which the vision support organization has entered into an agreement to provide two or more business support services;
- (3) the name of each optometrist who owns any portion of the vision support organization;
- (4) the name of each person who is not an optometrist and owns five percent or more of the vision support organization; and
- (5) a list of all business support services provided to each optometrist or each entity that employs or contracts with an optometrist to provide eye care services.

(b) Requires that a registration and each corrected registration be accompanied by a fee set by SOS in an amount necessary to recover the costs of administering this chapter.

(c) Provides that a registration or corrected registration is not effective until the vision support organization pays the fee required by this section.

Sec. 74.005. TIMING OF REGISTRATION; CORRECTION REQUIRED. (a) Requires that the registration required by Section 74.002, except as provided by Subsection (b), be filed with SOS not later than January 31 of each year for which the registration is effective.

(b) Requires a vision support organization that initially meets the requirement for registration under Section 74.002 after January 31 to file the registration required by that section not later than the 90th day after the date an agreement to provide business support services is executed.

(c) Requires a vision support organization to file a corrected registration semiannually as necessary.

Sec. 74.006. FAILURE TO FILE REGISTRATION OR CORRECTION. (a) Provides that a person who fails to file a registration or a corrected registration as required by this chapter is liable to the state for a civil penalty in an amount not to exceed \$1,000.

(b) Provides that each day a violation continues or occurs is a separate violation for the purpose of imposing the civil penalty.

(c) Requires the attorney general to file suit to collect the civil penalty provided by this section. Authorizes the suit to be filed in Travis County or any county where the vision support organization provides business support services.

Sec. 74.007. INTERAGENCY MEMORANDUM. Requires SOS to enter into an interagency memorandum to share the information collected by SOS under this chapter with any relevant state agency.

Sec. 74.008. APPLICABILITY. Provides that this chapter does not limit business support services that are authorized to be provided to an optometrist by a vision support organization, to the extent permitted under Section 351.408 (Control of Optometry), Occupations Code.

Sec. 74.009. LIMITATION ON OPTOMETRY BOARD RULEMAKING. Prohibits TOB from adopting any rule limiting the right of an optometrist to contract with a vision support organization for business support services that are otherwise legally permissible.

SECTION 2. Provides that a vision support organization, notwithstanding Section 74.002, Business and Commerce Code, as added by this Act, is not required to register under that section before February 1, 2024.

SECTION 3. Effective date: September 1, 2023.