

**SUBJECT:** Physician employment at a private medical school

**COMMITTEE:** Public Health — favorable, without amendment

**VOTE:** 7 ayes — Gray, Capelo, Glaze, Hilderbran, Maxey, McClendon, Uresti  
1 nay — Delisi  
1 absent — Coleman

**WITNESSES:** For — W. Dalton Tomlin, Baylor College of Medicine  
Against — None  
On — Tony Cobos, Texas Board of Medical Examiners; James Guckian, M.D.; John R. Holcombe, M.D., Texas Medical Association and Texas Alliance of Nonprofit 5.01a Corporations

**BACKGROUND:** The Medical Practice Act (art. 4495b VACS), secs. 3.07(a) - (e) and 3.08(15) prohibits the practice of medicine by an unlicensed individual or any partnership, association, or corporation. This has been interpreted to prohibit the corporate practice of medicine. That means a business entity cannot practice medicine, nor can it control the practice of licensed doctors or their hiring or firing.  
The Medical Practice Act sec. 5.01(a) also authorizes the Board of Medical Examiners to certify nonprofit corporations formed entirely by licensed doctors that have been organized for specific statutorily authorized purposes. Those purposes include teaching, research, supporting medical school education, and delivering health care to the public. Such certified corporations are often referred to as 5.01(a) corporations.

**DIGEST:** HB 1491 would amend the Medical Practice Act to authorize a private medical school accredited by the Liaison Committee on Medical Education to employ or contract for the services of physicians to provide medical services and to retain all or part of the resulting income.  
The bill would take immediate effect if finally passed by a two-thirds record

vote of the membership of each house.

**SUPPORTERS  
SAY:**

HB 1491 would take care of an accounting problem at Baylor College of Medicine that arose from a recent ruling by the Internal Revenue Service (IRS). The IRS ruled that, for federal income tax purposes, private medical school faculty doctors must be treated as employees, not as contractors. This ruling has placed Baylor in conflict with state medical practice law, which states that a corporate entity cannot employ a doctor.

HB 1491 would bring Baylor College of Medicine operations into compliance with both state law and the IRS ruling. Otherwise the school would have to divert as much as \$3 million in limited funds from medical training and health care programs in order to set up a special accounting system or 5.01(a) nonprofit corporation.

HB 1491 would make no changes to the way faculty doctors have been treated at Baylor for over 100 years, nor would it place doctors under the supervision of non-doctors. Baylor College of Medicine is the only accredited private medical school in Texas, and its chief executive officer and all of its deans are licensed physicians.

State-run medical schools do not find themselves in the same legal bind as Baylor because of a 1994 court decision. The Fort Worth Court of Appeals, in *Hilley v Members of the Board of Regents of the UT System*, ruled that the prohibition in the Medical Practice Act on non-licensed entities hiring doctors was clearly never intended to pertain to state-run medical schools.

The 5.01(a) corporations set up at state medical schools are usually established to provide indigent health care and to compete for managed care contracts. They are not established to pay faculty, as would have to be done at Baylor if this bill is not enacted.

**OPPONENTS  
SAY:**

This bill could erode the protections currently in place that prohibit the corporate practice of medicine. State medical schools operate 5.01(a) nonprofit corporations to take care of accounting problems associated with varying levels of funding from grants, research, patient care, and teaching. Baylor College of Medicine should be required to do the same. If this bill passes, the medical school would be free to change its current structure and

employ non-physicians who potentially could control the practice of physicians.

NOTES: The companion bill, SB 1266 by Ellis, has been referred to the Senate Health Services Committee.