

- SUBJECT:** Creating a patient protection office within the Health Professions Council
- COMMITTEE:** Public Health — committee substitute recommended
- VOTE:** 9 ayes — Capelo, Laubenberg, Truitt, Coleman, Dawson, McReynolds, Naishtat, Taylor, Zedler
- 0 nays
- WITNESSES:** For — Lisa McGiffert, Consumers Union; (*Registered, but did not testify:*) Tom “Smitty” Smith, Public Citizen; Matt Wall, Texas Hospital Association; James Willmann, Texas Nurses Association
- Against — None
- On — Gay Dodson, Health Professions Council; Donald Patrick, Texas State Board of Medical Examiners; (*Registered, but did not testify:*) Charles Horton, Health Professions Council
- BACKGROUND:** The Texas Health Professions Council, a division of the Texas Department of Health (TDH), was established in 1993 to achieve administrative efficiencies through partial consolidation of health licensing agencies. The council’s 13 licensing agencies represent 35 professional boards or registries. The regulated professions include dentists, hygienists, psychologists, dieticians, speech pathologists, family therapists, perfusionists, opticians, athletic trainers, massage therapists, social workers, pharmacists, veterinarians, physicians, nurses, acupuncturists, and physical therapists.
- DIGEST:** CSHB 2985 would require the Health Professions Council to establish an Office of Patient Protection (OPP) to represent the interests of consumers in matters before health licensing agencies. The office would have to serve as an ombudsman for consumer complaints at licensing agencies and help consumers obtain information about the status of complaints.
- The office could represent consumers in general before licensing agencies and could appeal agencies’ decisions on behalf of consumers as a class. It could not appeal an individual complainant’s case. The office could report to the

Legislature and could recommend changes to agency rules. It would have to evaluate rules proposed for adoption by licensing agencies and changes to relevant laws and would have to recommend statutory changes to the Sunset Advisory Commission during review of a relevant licensing agency.

The OPP would have to inform the public about the complaint process at each licensing agency and about the council's telephone complaint line. The office also would have to adopt a standard complaint form for filing a complaint with any of the agencies.

The governor would have to appoint an executive committee for the OPP that would include at least three public members of the governing bodies of licensing agencies. The executive committee would have to appoint a director to run the program. The director could not be a health-care professional licensed by one of the council's agencies, a person financially involved in the delivery of health care, a representative of a trade association related to a licensed health profession, or a registered lobbyist.

The OPP would be located with and administratively attached to the council but could not interfere with the council's other duties and would have to reimburse the council for administrative expenses. The office would have access to all complaints received by an agency and records that were available to third parties in a proceeding involving the agency. The information would be subject to the same confidentiality requirements as for the agency.

Funding for the OPP would be generated through a \$5 fee on initial licensing or registration and a \$1 fee on renewals. It would be collected in the same manner as the fee that funds the Health Professions Council.

The bill would take effect September 1, 2003. The council would have to establish the OPP by January 1, 2004, and the licensing fee surcharge would apply only to fees collected on or after that date.

**SUPPORTERS
SAY:**

Health-care consumers need an advocate. The boards that regulate health professions tend to overrepresent the interests of the professions they regulate. The majority of board members are licensees, and even public members tend to rely on the professionals they regulate for information and perspective. This can result in consumers' interests being lost in the shuffle.

Often, legislators and the public never hear of trouble with a licensing board until news reports of egregious problems surface. The public does not have regular contact with these boards, and the Legislature may not know the questions to ask to ferret out problems. The Office of Patient Protection proposed by CSHB 2985 would follow trends in consumer issues with the boards, and the Legislature or the boards themselves could take corrective action before problems grew dire.

One of the biggest challenges consumers face when dealing with boards is in the complaint process. Consumers often report that they cannot determine where their complaints are in the process or what action has been taken. The OPP would help in this capacity by representing the interests of all patients in the aggregate, rather than in individual cases. Consumers also face problems in navigating the array of licensing boards. The OPP would alleviate these problems by creating a single standard complaint form and by publicizing the council's toll-free complaint line.

The new office would be self-funded by a fee on professionals' licenses. This would require no commitment of additional general revenue nor reduce the funding stream for a licensing board's regulatory and oversight activities.

Similar offices have worked well in representing consumer interests. The Public Utility Commission, Department of Insurance, and Texas Commission on Environmental Quality have independent advocate offices that represent consumers. Patients should enjoy the same representation.

**OPPONENTS
SAY:**

CSHB 2985 is unnecessary. The state has enough oversight in place to ensure that boards represent the public. Each board has public members and is subject to oversight by the Health Professions Council, TDH, the Health and Human Services Commission, and the Legislature. Also, each board is reviewed periodically by the Sunset Advisory Commission, the state auditor, and the comptroller. Texas does not need another governmental body to ensure that consumers' interests are represented.

**OTHER
OPPONENTS
SAY:**

The bill should give the OPP some real authority. It should compel the office to report to the Legislature on a regular basis, such as during appropriations hearings or before each legislative session, so that consumers' problems would not get lost in the sunset process.

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NOTES:

The bill's fiscal note estimates that it would generate \$287,000 during fiscal 2004-05 and about \$193,000 each year thereafter through additional licensing fees.

As filed, HB 2985 would have designated the functions of the Office of Patient Protection only as public information, assistance, and monitoring of agencies. It would have funded the office with a \$1 surcharge on new and renewed licenses and registrations.