

- SUBJECT:** Rural hospital employment of physicians
- COMMITTEE:** County Affairs — committee substitute recommended
- VOTE:** 8 ayes — Coleman, Marquez, L. Gonzales, Gooden, Hamilton, Paxton, W. Smith, White
- 0 nays
- 1 absent — Jackson
- WITNESSES:** For — Don McBeath, Texas Organization of Rural and Community Hospitals; Jeff Turner, Moore County Hospital District; Cornel Van Gorp; (*Registered, but did not testify:* Jim Allison, Debbie Ingalsbe, County Judges and Commissioners Association of Texas; Charles Bailey, Texas Hospital Association; David Holt, Scurry County Hospital District Cogdell Memorial Hospital; Gabriela Saenz, Christus Health; Kandice Sanaie, Texas Association of Business; Andrew Smith, University Health System; Rick Thompson, Texas Association of Counties; Chris Yanas, Teaching Hospitals of Texas)
- Against — None
- On — Dan Finch, Susan Strate, Texas Medical Association
- BACKGROUND:** Statute and case law currently prohibit the corporate practice of medicine, which prevents corporations and most hospitals from hiring physicians as employees.
- DIGEST:** CSHB 1700 would authorize rural, critical-access, or sole-community hospitals to employ physicians. A hospital that employed a physician would have to appoint a chief medical officer who was recommended by medical staff and approved by the hospital board. All employed physicians would report to the chief medical officer in matters regarding the practice of medicine. The chief medical officer would have to notify the Texas Medical Board that the hospital was employing physicians and report any perceived compromise of independent medical judgment.

The hospital also would have to adopt and enforce policies approved by the medical staff that ensured physician retention of independent medical judgment in providing patient care, including policies related to credentialing, quality assurance, peer review, and mechanisms to process and resolve complaints regarding interference with a physician's independent medical judgment. The hospital would have to treat employed and nonemployed physicians equally regarding staff membership and privileges.

An employed physician could not be disciplined for reasonable advocacy of patient care and would have the right to participate in selecting professional liability coverage, to an independent defense if he or she paid for it, and to consent to the settlement of any action or proceeding. Any employment agreement that included a covenant not to compete would have to comply with covenant requirements in the Business and Commerce Code relating to the practice of medicine.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

**SUPPORTERS
SAY:**

CSHB 1700 is needed to help recruit and retain physicians in rural areas, where medical services and professionals are in short supply, and increase access to much needed care. The bill would allow hospitals to offer salaries and benefits and thereby attract physicians who do not want to risk uncertain income from establishing or maintaining a private practice in a sparsely populated area. Hospital employment under the provisions of this bill would just be a means of compensating doctors, not controlling their practice. It would not allow people who are not doctors to supervise doctors.

The bill is supported by both doctors and hospitals. It would squarely place the practice of medicine in the hands of medical staff and the chief medical officer and under the regulatory authority of the Texas Medical Board. It contains sufficient protections to deter and penalize interference with a doctor's independent medical judgment and thereby would protect quality patient care. The Texas Medical Association (TMA) testified in favor of the Senate companion bill, which contains identical provisions to the House committee substitute.

The bill would legalize what is legal in most states. Furthermore, Texas already has made exceptions for thousands of physicians to be employed in medical schools, state schools, prisons, school districts, federally qualified health centers, and numerous individual hospitals.

Last session, the Legislature overwhelmingly voted to allow physician employment in rural hospitals with the enactment of HB 3485. While the governor vetoed the bill because of concerns over a revision of tort law, that tort law revision is not included in this bill. In fact, the governor in veto message specifically expressed his support for the provision in HB 3485 that would have allowed rural hospitals to directly hire physicians. This session, the House already has approved several bills authorizing both small and large hospital districts to employ physicians, all of which were filed for the same or similar reasons as CSHB 1700.

**OPPONENTS
SAY:**

Doctors should not work for any entity that could influence, interfere with, or prevent the doctor's responsible care for a patient. A hospital concerned about its financial bottom line could try to direct physician care. Rural communities should use other tools, such as physician repayment loans, to recruit and retain doctors.

NOTES:

The committee substitute added language that the provisions would apply to medical services provided at other health care facilities owned or operated by the hospital. It added requirements that the chief medical officer be a member of the medical staff and that policies protecting a doctor's independent judgment be approved by the medical staff. It added provisions related to resolving conflicting medical and hospital policies, specifying the chief medical officer's duties and relationship with the Texas Medical Board, relating to professional liability-related rights of doctors, and regarding any covenants not to compete. It removed from the original version provisions restricting or limiting the hospital's continued ability to employ doctors.

The companion bill, SB 894 by Duncan, passed the Senate by 31-0 on the Local and Uncontested Calendar on April 17 and was reported favorably, without amendment, by the House County Affairs Committee on April 28.