

SUBJECT: Allowing certain out-of-state labs to operate as in-state providers

COMMITTEE: Public Health — favorable, without amendment

VOTE: 9 ayes — Kolkhorst, Naishtat, Collier, Cortez, S. Davis, Guerra, S. King, J.D. Sheffield, Zedler

0 nays

2 absent — Coleman, Laubenberg

SENATE VOTE: On final passage, May 1 — 31 - 0

WITNESSES: (*On House companion bill, HB 2490:*)
For — Chris Hughes, Labcorp; (*Registered, but did not testify:* Haley Cornyn, Clinical Pathology Laboratories; Kris Kwolek, Labcorp; Christina Thompson, Texas Association for Clinical Laboratory)

Against — None

On — Laurie VanHoose, Texas Health and Human Services Commission

BACKGROUND: Texas Administrative Code, sec. 352.17, effective December 31, 2012, considers an applicant or re-enrolling provider as out-of-state if:

- the physical address where services are or will be rendered is located outside of Texas and within the United States;
- the physical address where the services or products originate or will originate is located outside of Texas and within the United States when providing services, products, equipment or supplies to a state Medicaid recipient; or
- the physical address where services are or will be rendered is located within Texas but patient records, billing records or both are outside the state and the applicant cannot produce copies of these records from their Texas location where services are rendered.

An out-of-state applicant or re-enrolling provider is ineligible to participate in Medicaid unless they meet certain criteria, such as medical

necessity, and are approved by HHSC or its designee. An out-of-state provider does not meet the criteria for Medicaid eligibility merely on the basis of having established business relationships with one or more providers that participate in Medicaid.

DIGEST:

SB 1401 would allow an out-of-state diagnostic laboratory to participate as an in-state provider under any program administered by a health and human services agency or the Texas Health and Human Services Commission that involved diagnostic laboratory services if:

- the laboratory or its parent, subsidiary, or affiliate operated a diagnostic laboratory in Texas;
- the laboratory or its parent, subsidiary, or affiliate individually or collectively employed at least 1,000 people in Texas;
- the laboratory was otherwise qualified to provide services under the program; and
- the laboratory was not prohibited from participating as a provider under any benefits programs administered by a health and human services agency or the commission for fraud, waste, or abuse.

This 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, 2013.

**SUPPORTERS
SAY:**

SB 1401 would strike a balance between encouraging state economic development, increasing efficiency for Texas-based diagnostic laboratories, and ensuring high quality and low costs for services under the Medicaid system.

The bill would clarify that the HHSC rules encouraging the use of in-state labs did not prohibit the use of out-of-state labs with a Texas-based parent, subsidiary, or affiliate. The bill would encourage in-state economic development by requiring labs to employ at least 1,000 people in Texas and be based in Texas before a connected out-of-state lab could be considered an in-state provider. Under the bill, eligible providers could operate more efficiently because they could avoid having to re-enroll in the system each year.

A small number of highly specialized tests, such as prenatal, oncology, or genetic testing for Medicaid patients need to be performed outside the state because these tests are either not performed at Texas facilities or

Texas facilities do not perform them for Medicaid patients. Requiring a specialized lab in each state would be cost prohibitive for Texas-based laboratories in terms of capital investment and because specialized labs process a much lower volume of lab work than standard clinical labs. The bill would allow lab tests to be done in the locations where economies of scale would ensure the fastest, most accurate, and most cost-effective service for state Medicaid patients.

Under the bill, there would be no change to HHSC rules regarding out-of-state providers and no additional cost to the state. The bill would not affect out-of-state providers not specifically defined in the bill and would not affect the enrollment or operation of labs already in-state.

**OPPONENTS
SAY:**

SB 1401 is not necessary because there is no shortage of specialty diagnostic laboratory providers operating in-state and could negatively affect wholly in-state businesses. The HHSC rules are meant to encourage the use of in-state providers. Encouraging Texas-based specialty laboratories operating out-of-state to move their operations in-state would be best for increasing economic development in-state, instead of allowing certain out-of-state providers to be considered as in-state providers.