

SUBJECT: Allowing complaints to be made against nonprofit health organizations

COMMITTEE: Public Health — committee substitute recommended

VOTE: 9 ayes — S. Thompson, Wray, Allison, Frank, Guerra, Ortega, Price,
Sheffield, Zedler

0 nays

2 absent — Coleman, Lucio

WITNESSES: For — Tim Bittenbinder, Texas Medical Association, Baylor Scott and
White Health; (*Registered, but did not testify*: Tom Forbes, Texas
Academy of Family Physicians; Dan Finch, Texas Medical Association;
Bobby Hillert, Texas Orthopaedic Association)

Against — None

On — Steve Wohleb, Texas Hospital Association

BACKGROUND: Occupations Code sec. 162.001 requires the Texas Medical Board (TMB)
to certify nonprofit health care organizations that meet certain standards.
Sec. 162.003 allows TMB to refuse to certify a nonprofit health
organization, revoke a certification made to that organization, or impose
an administrative penalty if the organization was found to have been
established, organized, or operated in violation of or with the intent to
violate statute regulating nonprofit health organizations.

DIGEST: CSHB 1532 would require the Texas Medical Board (TMB) to accept and
process complaints made against nonprofit health organizations. The bill
also would require these organizations to develop anti-retaliation policies
for physicians and submit biennial reports to TMB.

Complaints against nonprofit health organizations. The bill would
require TMB to accept and process complaints against nonprofit health
organizations for alleged violations applicable to a health organization in

the same manner as complaints made against health professionals. TMB would be required to:

- maintain a system to promptly and efficiently act on complaints filed with the board;
- notify the health organization that was the subject of a complaint that a complaint had been filed, disclose the nature of the complaint, and provide the organization an opportunity to respond to the complaint;
- ensure that a complaint was not dismissed without appropriate consideration; and
- establish methods by which physicians employed by a health organization were notified of the contact information for TMB for the purpose of directing complaints to the board.

TMB could dispose of a complaint or resolve the investigation of a complaint to the extent the board determined existing provisions relating to complaints made against health professionals could be made applicable to nonprofit health organizations.

These provisions would neither require an individual to file a complaint nor prohibit an individual from filing a complaint against a nonprofit health organization relating to the services provided or policies of the organization or an alleged violation by the organization. Each complaint and piece of investigative information possessed by the board would be privileged and confidential.

Anti-retaliation policy. Nonprofit health organizations would be required to develop, implement, and comply with an anti-retaliation policy for physicians under which health organizations could not terminate, demote, retaliate against, discipline, discriminate against, or otherwise penalize a physician for the following actions made in good faith:

- filing a complaint;
- cooperating with an investigation or TMB proceeding relating to a complaint; or

- communicating to a patient what the physician reasonably believed to be the physician's best, independent medical judgment.

TMB could take any action authorized by statute or applicable board rule after a determination was made that a nonprofit health organization had failed to develop, implement, or comply with an anti-retaliation policy. Nonprofit health organizations would have to develop anti-retaliation policies by December 31, 2019.

Violations. The bill would add violations of the bill's provisions to the list of actions in response to which TMB could refuse to certify a nonprofit health organization, revoke a certification made to that organization, or impose an administrative penalty.

Biennial report. Each nonprofit health organization would have to file a biennial report with TMB that must include statements signed and verified by the president or CEO of the organization that:

- provided the name and address of the organization, each member of the organization, each member of the board of directors, and each officer of the organization;
- disclosed any change in the composition of the board of directors since the last report;
- indicated whether the organization's certificate of formation or bylaws were amended since the last report;
- included a concise explanation of amendments and stated whether these amendments were approved by the board of directors;
- included a copy of the organization's current certificate of formation and bylaws, if these documents were not currently on file with TMB; and
- indicated that the organization was complying with requirements for continued certification under statute and TMB rules.

The report also would have to include a statement from each current director of the health organization that was signed and verified by the director and that:

- stated that the director was licensed by TMB to practice medicine, was actively engaged in the practice of medicine, and had no restrictions on the director's license;
- stated that the director would exercise independent judgment in all matters, would exercise best efforts to ensure the organization's compliance with statute and TMB rules, and would immediately report to TMB any action or event the director believed in good faith violated statute or board rules;
- identified and concisely explained the nature of each financial relationship the director had with a member, another director, or supplier of the health organization and their affiliates; and
- stated that the director had disclosed all of these relationships.

The report would be submitted with a fee prescribed by board rule. The statements regarding the composition of a health organization would have to be published on TMB's website by January 1 of each year. Information provided in all other statements in the report would be public information subject to disclosure under the Texas Public Information Act.

The board would be authorized to adopt necessary rules to implement the provisions of the section requiring biennial reports.

Effective date. The bill would take effect September 1, 2019, except for the provisions relating to actions taken by TMB relating to a nonprofit health organization's noncompliance with an anti-retaliation policy, which would take effect January 1, 2020.

The provisions concerning violations and the processing of complaints against nonprofit health organizations would apply only to a violation that occurred on or after the effective date of the bill.