

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1500
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State Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In Texas, the prohibition of the corporate practice of medicine dates back to the early 1900s to curb the unlicensed practice of medicine in response to a concern about unqualified people peddling miracle cures and potions to cure a litany of medical and psychological conditions.

Moreover, as growth in the medical profession developed, many private businesses saw opportunity in the practice of medicine and they began to develop clinics with hired physicians to provide medical care to the public. The medical community had concerns about this growth of corporate clinics and sought legal and legislative prohibitions to these practices. In response to those concerns, many states, including Texas, created requirements that only an individual could be licensed to practice medicine. Courts have consistently interpreted this requirement as a prohibition against the corporate practice of medicine.

Texas is one of only five states that continues to explicitly define or actively enforce some form of the prohibition of the corporate practice of medicine. However, Texas does allow private nonprofit medical schools, school districts, nonprofit health organizations certified by the Texas Medical Board, federally qualified health care centers, and migrant, community, and homeless centers to employ physicians. Additionally, the legislature has allowed approximately 10 hospital districts to change their enabling legislation to employ physicians. The state itself is allowed to employ physicians to work in state academic medical centers, state hospitals, and prisons.

Many smaller Texas communities report that the prohibition against the hiring of physicians is a significant factor contributing to the inability to recruit and retain physicians to serve in those communities. When an individual physician is required to establish a sole practitioner office that requires health insurance and retirement benefits, the cost and administrative burden can be a deterrent to agreeing to practice in a small community.

C.S.S.B. 1500 amends current law relating to the employment of physicians by certain hospitals.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 311, Health and Safety Code, by adding Subchapter E, as follows:

SUBCHAPTER E. EMPLOYMENT OF PHYSICIANS BY CERTAIN HOSPITALS

Sec. 311.061. **APPLICABILITY OF SUBCHAPTER.** Provides that this subchapter applies only to a hospital that is designated as a critical access hospital under the authority of and in compliance with 42 U.S.C. Section 1935i-4; is a sole community hospital, as that term is defined by 42 U.S.C. Section 1395ww(d)(5)(iii); or is located in a county with a population of 50,000 or less.

Sec. 311.062. EMPLOYMENT OF PHYSICIAN PERMITTED. (a) Authorizes a hospital to employ a physician and retain all or part of the professional income generated by the physician for medical services provided at the hospital.

(b) Authorizes a hospital located in a county with a population of 50,000 or less to continue to employ any physicians employed by the hospital on or before the date of release of a federal decennial census that shows the county's population exceeds 50,000. Prohibits the hospital from employing a new physician after that date.

Sec. 311.063. HOSPITAL POLICIES. (a) Requires a hospital to adopt and maintain policies to ensure that a physician employed under this subchapter whose professional income is retained under Section 311.062 exercises independent medical judgment in providing care to patients at the hospital.

(b) Requires that the policies adopted under this section include policies relating to credentialing; quality assurance; utilization review; peer review; medical decision-making; and due process.

Sec. 311.064. CREDENTIALING AND PRIVILEGES. (a) Provides that a physician employed by a hospital under this subchapter is subject to the same standards and procedures regarding credentialing, peer review, quality of care, and privileges as a physician not employed by the hospital.

(b) Requires a hospital to give equal consideration regarding the issuance of credentials and privileges to physicians employed by the hospital and physicians not employed by the hospital.

Sec. 311.065. OTHER HOSPITAL-PHYSICIAN RELATIONSHIPS. Prohibits this subchapter from being construed as altering, voiding, or prohibiting any relationship between a hospital and a physician, including a contract or arrangement with an approved nonprofit health corporation that is certified under Section 162.001(b) (relating to approval and certification of certain health organizations), Occupations Code, and that holds a certificate of authority issued under Chapter 844 (Certification of Certain Nonprofit Health Corporations), Insurance Code.

SECTION 2. Amends Section 162.001, Occupations Code, by adding Subsection (d), to require the Texas Medical Board (TMB) to certify a health organization to employ physicians licensed by TMB if the organization:

- (1) is a critical access hospital under the authority of and in compliance with 42.U.S.C. Section 1395i-4;
- (2) is a sole community hospital, as that term is defined by 42 U.S.C. Section 1395ww(d)(5)(D)(iii); or
- (3) is located in a county with a population of 50,000 or less.

SECTION 3. Amends Subchapter A, Chapter 162, Occupations Code, by adding Section 162.004, as follows:

Sec. 162.004. EMPLOYER AND EMPLOYEE REQUIREMENTS. Provides that the following requirements apply to an organization certified under Section 162.001(d) that employs physicians:

- (1) a physician shall retain independent medical judgment in providing care to patients at the organization and may not be penalized for reasonably advocating for patient care;
- (2) the organization shall provide a certain portion of medical services free of charge, or at a reduced fee commensurate with a patient's ability to pay;

(3) a physician employed by the organization shall participate in the provision of services under Subdivision (2);

(4) an organization may not include a non-compete clause on termination in a physician employment contract; and

(5) a physician who has privileges at the organization and is employed by the hospital and a physician who is not employed by the hospital must be given equal consideration and treatment in the creation and execution of all medical staff bylaw provisions regardless of the physician's employer.

SECTION 4. Effective date: September 1, 2009.