

## **BILL ANALYSIS**

Senate Research Center  
82R2254 YDB-F

S.B. 894  
By: Duncan et al.  
State Affairs  
3/24/2011  
As Filed

### **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 actively define or actively enforce some form of 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 12 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 solo practice that requires health insurance and retirement benefits, the cost and administrative burden can be a deterrent to agreeing to practice in a small community.

S.B. 894 expands the current exemptions from the prohibition of the corporate practice of medicine to include a hospital in a county with a population of less than 50,000, a hospital designated as a critical access hospital, or a hospital that is a sole community hospital. S.B. 894 provides clear protections to ensure that employed physicians maintain independent medical judgment.

As proposed, S.B. 894 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 AND CONSTRUCTION OF SUBCHAPTER. (a) Provides that this subchapter applies only to a hospital that employs or seeks to employ a physician and that:

(1) is designated as 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.

(b) Prohibits this subchapter from being construed as authorizing the governing body of a hospital to supervise or control the practice of medicine, as prohibited under Subtitle B (Physicians), Title 3 (Health Professions), Occupations Code.

Sec. 311.062. EMPLOYMENT OF PHYSICIANS PERMITTED; CONTRACT RESTRICTIONS. (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 if the hospital satisfies the requirements of this subchapter.

(b) Prohibits the term of an employment contract entered into under this section from exceeding four years.

(c) Authorizes a hospital that is located in a county with a population of 50,000 or less and that is not a hospital described by Section 311.061(a)(1) or (2) 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 DUTIES AND POLICIES. (a) Requires a hospital that employs physicians under this subchapter to:

(1) appoint a chief medical officer, who may be a member of the hospital's medical staff; and

(2) adopt, maintain, and enforce policies to ensure that a physician employed by the hospital exercises the physician's independent medical judgment in providing care to patients at the hospital.

(b) Requires the policies adopted under this section to include:

(1) policies relating to credentialing, quality assurance, utilization review, peer review, and medical decision-making; and

(2) the implementation of a complaint mechanism to process and resolve complaints regarding interference or attempted interference with a physician's independent medical judgment.

(c) Requires that the policies adopted under this section be approved by the chief medical officer of the hospital.

(d) Requires each physician employed by a hospital under this subchapter, for all matters relating to the practice of medicine, to ultimately report to the chief medical officer of the hospital.

Sec. 311.064. CONTRACTUAL WAIVER OR OTHER ACTION PROHIBITED. Prohibits the requirements of this subchapter from being voided or waived by contract.

SECTION 2. Amends Section 162.001, Occupations Code, by adding Subsection (d), as follows:

(d) Requires the Texas Medical Board (TMB) to certify a health organization to employ physicians licensed by TMB if the organization:

(1) is designated as 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 a hospital 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 a health organization certified under Section 162.001(d) that employs physicians:

(1) requires a physician to retain independent medical judgment in providing care to patients at the organization and provides that a physician may not be penalized for reasonably advocating for patient care; and

(2) requires a physician who has privileges at the organization and is employed by the hospital and a physician who is not employed by the hospital to 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: upon passage or September 1, 2011.