

## **BILL ANALYSIS**

Senate Research Center  
83R19810 CJC-F

H.B. 1247  
By: Clardy (Nichols)  
Intergovernmental Relations  
5/3/2013  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Interested parties contend that for decades Texas has maintained requirements stipulating that only an individual may be licensed to practice medicine, that the courts have consistently interpreted these requirements as a prohibition against the corporate practice of medicine, and that Texas is one of only a few states that continues to actively define or actively enforce some form of prohibition against the corporate practice of medicine. These parties further contend that this prohibition was originally intended to prevent the unlicensed practice of medicine and to assuage the medical community's concerns about the rise of corporate clinics. However, some smaller Texas communities report that the current prohibition against the hiring of physicians is a significant factor contributing to the inability to recruit and retain physicians to serve in those communities. For example, establishing a solo practice may require an individual physician to purchase health insurance and retirement benefits, leading to greater costs and an increased administrative burden which can ultimately deter the physician from agreeing to practice in that community.

Interested parties contend that Texas currently allows certain entities to employ physicians and that the legislature has allowed a number of hospital districts to change their enabling legislation to allow the employment of physicians. These parties assert that there is a need for the Nacogdoches County Hospital District to be able to employ physicians directly so that the district can attract world-class doctors and no longer be put at a disadvantage with other hospitals afforded the same right. H.B. 1247 seeks to address this issue by establishing provisions relating to the authority of the district's board of directors to employ physicians.

H.B. 1247 amends current law relating to the authority of the board of directors of the Nacogdoches County Hospital District to employ physicians.

### **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 the heading to Section 1069.060, Special District Local Laws Code, as effective April 1, 2013, to read as follows:

Sec. 1069.060. STAFF AND EMPLOYEES.

SECTION 2. Amends Section 1069.060, Special District Local Laws Code, as effective April 1, 2013, by adding Subsection (b-1) and amending Subsection (c), as follows:

(b-1) Authorizes the board of directors of the Nacogdoches County Hospital District (board) (district) to employ physicians, but only as provided by Section 1069.0605.

(c) Authorizes the board, except as provided by Section 1069.0605, to provide that the district administrator has the authority to employ district employees, including technicians and nurses. Makes nonsubstantive changes.

SECTION 3. Amends Subchapter B, Chapter 1069, Special District Local Laws Code, as effective April 1, 2013, by adding Section 1069.0605, as follows:

Sec. 1069.0605. EMPLOYMENT OF PHYSICIANS. (a) Authorizes the board to employ a physician and retain all or part of the professional income generated by the physician for medical services provided at a hospital or other health care facility owned or operated by the district if the board satisfies the requirements of this section.

(b) Requires the board to:

(1) appoint a chief medical officer for the district who has been recommended by the medical staff of the district; and

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

(c) Requires that the policies adopted under this section include:

(1) policies relating to:

(A) credentialing and privileges;

(B) quality assurance;

(C) utilization review;

(D) peer review and due process; and

(E) 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.

(d) Requires that the policies adopted under this section be approved by the district medical staff. Requires the district medical staff and the board to jointly develop and implement a conflict management policy to resolve any conflict between a medical staff policy and a board policy.

(e) Requires each physician employed by the district, for all matters relating to the practice of medicine, to ultimately report to the chief medical officer of the district.

(f) Requires the chief medical officer to notify the Texas Medical Board (TMB) that the board is employing physicians under this section and that the chief medical officer is the board's designated contact with TMB. Requires the chief medical officer to immediately report to TMB any action or event that the chief medical officer reasonably and in good faith believes constitutes a compromise of the independent medical judgment of a physician in caring for a patient.

(g) Requires the board to give equal consideration regarding the issuance of medical staff membership and privileges to physicians employed by the district and physicians not employed by the district.

(h) Requires a physician employed by the district to retain independent medical judgment in providing care to patients and may not be disciplined for reasonably advocating for patient care.

(i) Authorizes a physician employed by the district, if the district provides professional liability coverage for physicians employed by the district, to participate in the selection of the professional liability coverage, has the right to an independent defense at the physician's own cost, and retains the right to consent to the settlement of any action or proceeding brought against the physician.

(j) Provides that, if a physician employed by the district enters into an employment agreement that includes a covenant not to compete, the agreement is subject to Section 15.50 (Criteria for Enforceability of Covenants Not to Compete), Business & Commerce Code.

(k) Prohibits the board from delegating to the chief executive officer of the district the authority to hire a physician.

(l) Provides that this section applies to medical services provided by a physician at a hospital or other health care facility owned or operated by the district.

(m) Requires that the authority granted to the board under this section to employ physicians apply as necessary for the district to fulfill the district's statutory mandate to provide medical care for the indigent and needy residents of the district as provided by Section 1069.101 (District Responsibility).

(n) Prohibits this section from being construed as authorizing the board to supervise or control the practice of medicine as prohibited under Subtitle B (Physicians), Title 3 (Health Professions), Occupations Code.

SECTION 4. Effective date: upon passage or September 1, 2013.