

BILL ANALYSIS

Senate Research Center
85R25412 TSR-F

C.S.S.B. 833
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Health & Human Services
4/26/2017
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The corporate practice of medicine (CPOM) doctrine was developed by the American Medical Association in the 19th century to protect the integrity of the medical profession in several ways, first by distinguishing between professional physicians and unqualified persons seeking to offer medical care, and, second, by restricting corporate influence on a physician's independent medical judgment. The doctrine in different iterations was incorporated into the laws of various states, and while many states have abandoned CPOM, Texas maintains the doctrine as a means to insulate the doctor-patient relationship from pecuniary pressures.

The CPOM doctrine in Texas law generally prohibits the employment of physicians by corporate entities. Chapter 162 (Regulation of Practice of Medicine), Occupations Code, specifies the types of entities that may employ physicians: certain nonprofit corporations providing health care (a migrant, community, or homeless health center and a federally qualified health center) and certain hospital districts. S.B. 1661 (82nd Legislature, Regular Session, 2011) made the first substantive amendments to Chapter 162 to protect the independent medical judgment of physicians employed by these entities. Specifically, it prohibited health organizations certified under Chapter 162 from interfering with a physician's medical judgment, required such health organizations to adopt and enforce policies to this effect, and prohibited health organizations from disciplining a physician for advocating on behalf of patient care.

C.S.S.B. 833 builds on this statutory language. The differences between the bill as introduced and the substitute are as follows. The original bill explicitly applies the penalties in Section 162.003 (including revocation of certification under Chapter 162 or the imposition of an administrative penalty) to a health organization's interference with physician discretion. The committee substitute does not have these provisions but adds clarifying language to Section 162.003, making it clear that a violation of physician discretion as described in Chapter 162 authorizes the Texas Medical Board (TMB) to penalize a health organization.

The original bill adds affirmative reporting requirements to TMB and the Office of the Attorney General (OAG) for chief medical officers and physicians who know of efforts by the health organization to interfere with a physician's independent medical judgment or to discipline the physician for advocating on behalf of patient care. The original bill states that any person employed by or affiliated with the health organization who knows of a failure by the chief medical officer to report violations of Chapter 162, as it would be amended by C.S.S.B. 833, is required to report such a failure to TMB and OAG. The substitute that will be presented to the committee on Wednesday, April 26, 2017, does not have these provisions but adds new statutory language to better define the manner in which TMB hears and processes complaints against health organizations. The committee substitute also prohibits in specific terms a health organization from retaliating against a physician who files a complaint. The substitute does not have the cause of action provisions or the language directing aggrieved physicians to use the appeals process internal to a health organization prior to exercising the cause of action.

C.S.S.B. 833 amends current law relating to the regulation of certain health organizations certified by the Texas Medical Board and provides an administrative penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to Texas Medical Board in SECTION 2 (Section 162.004, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 162.003, Occupations Code, to authorize the Texas Medical Board (TMB) to take certain actions on a determination that a health organization (organization) commits a violation of this subtitle (Physicians) or is established, organized, or operated in violation of or with the intent to violate this subtitle.

SECTION 2. Amends Subchapter A, Chapter 162, Occupations Code, by adding Sections 162.004 and 162.005, as follows:

Sec. 162.004. PROCEDURES FOR AND DISPOSITION OF COMPLAINTS AGAINST NONPROFIT HEALTH CORPORATIONS. (a) Requires TMB to accept and process complaints against an organization certified under Section 162.001(b) (relating to requiring TMB to approve and certify certain organizations) for alleged violations of this subchapter (Regulation by Board of Certain Nonprofit Health Corporations) or any other provision of this subtitle applicable to an organization in the same manner as provided under Subchapter B (Complaint Procedures), Chapter 154 (Public Interest Information and Complaint Procedures), and the rules adopted under that subchapter, including certain requirements.

(b) Provides that each complaint and certain investigative information in the possession of or received or gathered by TMB or TMB's employees or agents relating to a certified organization is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than TMB or TMB's employees or agents involved in the investigation or discipline of a certified organization.

(c) Authorizes TMB to dispose of a complaint or resolve the investigation of a complaint under this section in a manner provided under Subchapter A (General Provisions), Chapter 164 (Disciplinary Actions and Procedures), to the extent TMB determines the provisions of that subchapter can be made applicable to a certified organization.

(d) Authorizes TMB to adopt rules as necessary to implement this section.

Sec. 162.005. RETALIATION PROHIBITED. (a) Defines "nonprofit health corporation."

(b) Prohibits a nonprofit health corporation (corporation) from, as applicable, terminating, demoting, retaliating against, disciplining, discriminating against, or otherwise penalizing a person, a person's family member, or a person's partner because the person:

(1) files a complaint under Section 162.004;

(2) reports in good faith an act or omission that the person reasonably believes is a violation or attempted violation of applicable state or federal law, including rules adopted under state or federal law, to certain entities, as appropriate;

(3) initiates or cooperates in an investigation or proceeding of a regulatory agency or law enforcement authority relating to care or services provided by, or policies of, the corporation; or

(4) communicates to a patient information regarding medically appropriate health care.

(c) Prohibits a corporation from prohibiting, restricting, or discouraging a person from taking any action described by Subsection (b).

(d) Provides that a person who makes a report under Subsection (b)(2) is immune from civil liability for a report made in good faith.

(e) Requires that an employment contract between a corporation and a physician contain a provision requiring the corporation to comply with the requirements of this section.

SECTION 3. Makes application of Section 162.003, Occupations Code, as amended by this Act, and Section 162.004, Occupations Code, as added by this Act, prospective.

SECTION 4. Makes application of Section 162.005, Occupations Code, as added by this Act, prospective.

SECTION 5. Provides that Section 162.005(e), Occupations Code, as added by this Act, applies only to a contract entered into on or after the effective date of this Act.

SECTION 6. Effective date: September 1, 2017.