

## **BILL ANALYSIS**

Senate Research Center  
86R29575 BEE-D

C.S.H.B. 1504  
By: Paddie (Nichols)  
Health & Human Services  
5/8/2019  
Committee Report (Substituted)

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

H.B. 1504 is the sunset bill for the Texas Medical Board (TMB). TMB licenses and regulates the state's physicians as well as seven other allied health professions to ensure that Texans receive safe and quality medical care. TMB is subject to abolishment under the Sunset Act on September 1, 2019, unless continued by the legislature.

The Sunset Advisory Commission's limited scope review of TMB follows up on the full Sunset review of TMB conducted in 2017, since TMB's Sunset bill failed to pass during the 85th Legislative Session.

The Sunset Advisory Commission focused on evaluating the ongoing appropriateness of the original recommendations, such as authorizing the board to establish a risk-based approach to inspecting office-based anesthesia providers. The commission also adopted several recommendations in addition to those from the previous biennium, like requiring TMB to adopt an expedited licensing process for qualified out-of-state physicians. Finally, the Sunset Advisory Commission recommends continuing the agency for 12 years. (Original Author's/Sponsor's Statement of Intent)

C.S.H.B. 1504 amends current law relating to the continuation and functions of the Texas Medical Board and authorizes a fee.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Medical Board (TMB) in SECTION 5 (Section 155.011, Occupations Code) of this bill.

Rulemaking authority is expressly granted to TMB and the governing board of the Texas Physician Health Program in SECTION 13 (Section 167.012, Occupations Code) of this bill.

Rulemaking authority is expressly granted to the Texas Board of Medical Radiologic Technology in SECTION 23 (Section 601.1021, Occupations Code) of this bill.

Rulemaking authority previously granted to TMB is modified in SECTION 10 (Section 164.003, Occupations Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 151.004, Occupations Code, as follows:

Sec. 151.004. APPLICATION OF SUNSET ACT. Provides that unless continued in existence as provided by Chapter 325, Government Code (Sunset Law), the Texas Medical Board (TMB) is abolished and this subtitle (Physicians) and Chapters 204 (Physician Assistants), 205 (Acupuncture), 206 (Surgical Assistants), 601 (Medical Radiologic Technologists), 602 (Medical Physicists), 603 (Perfusionists), and 604 (Respiratory Care Practitioners) expire September 1, 2031, rather than September 1, 2019.

SECTION 2. Amends Section 152.010, Occupations Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Deletes existing text of Subdivision (4) relating to the rules of TMB, with an emphasis on the rules that relate of disciplinary and investigative authority. Deletes existing text of Subdivision (5) relating to the current budget for TMB. Creates Subdivisions (5) and (6)(A) from existing text. Redesignates Subdivisions (6)–(8) as Subdivisions (5)–(7). Requires the training program to provide the person with information regarding:

(1) the law governing TMB operations, rather than this subtitle;

(2) the programs, functions, rules, and budget of TMB, rather than the programs operated by TMB;

(3) the scope of and limitations on the rulemaking authority of TMB, rather than the role and functions of TMB;

(4) the types of TMB rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting or impacting prices charged by persons engaged in a profession or business TMB regulates, including any rule, interpretation, or enforcement action that:

(A) regulates the scope of practice of persons in a profession or business that TMB regulates;

(B) restricts advertising by persons in a profession or business TMB regulates;

(C) affects the price of goods or services provided by persons in a profession or business TMB regulates; or

(D) restricts participation in a profession or business TMB regulates;

(5) the results of the most recent formal audit of TMB;

(6) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosure of conflicts of interest; and

(B) other laws applicable to members of TMB in performing their duties; and

(7) makes no further changes to this subdivision.

(d) Requires the executive director of TMB (executive director) to create a training manual that includes the information required by Subsection (b). Requires the executive director to distribute a copy of the training manual annually to each TMB member. Requires each TMB member to sign and submit to the executive director a statement acknowledging that the member received and has reviewed the training manual.

SECTION 3. Amends Section 153.058(a), Occupations Code, as follows:

(a) Requires TMB to develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking), Government Code, for the adoption of any rules by TMB, rather than the adoption of TMB rules; and

(2) makes no changes to this subdivision.

SECTION 4. Amends Section 154.006, Occupations Code, by amending Subsections (b) and (k) and adding Subsection (b-1), as follows:

(b) Creates an exception under this section (Physician Profiles) to certain required information on each physician to be included in a profile.

(b-1) Authorizes TMB, on or after the fifth anniversary of the date a remedial plan is issued under Section 164.0015 (Remedial Plan), to remove from the profile of the physician subject to the plan any information regarding the plan and the complaint resolved by the plan unless:

(1) the complaint was related to the delivery of health care; or

(2) more than one remedial plan has been issued to resolve complaints alleging the same violation by the physician, including a complaint not related to the delivery of health care.

(k) Deletes existing text relating to a requirement that TMB, in the annual update of a physician's profile under Subsection (g), remove any record of a formal complaint required under Subsection (b)(15) or (i) (relating to certain procedures in the event of the filing of a formal complaint against a physician) if the complaint was dismissed more than five years before the date of the update and makes conforming changes.

SECTION 5. Amends Subchapter A, Chapter 155, Occupations Code, by adding Section 155.011, as follows:

Sec. 155.011. EXPEDITED LICENSING PROCESS FOR CERTAIN OUT-OF-STATE APPLICANTS. Requires TMB by rule to develop and implement an expedited licensing process for an applicant who is considered to have satisfied the examination requirements of this chapter under Section 155.0561(d).

SECTION 6. Amends Section 155.056(a), Occupations Code, to require an applicant, except as otherwise provided by Subsection (a-1) (relating to a certain limit on examination attempts not applying to the Texas medical jurisprudence examination) and Section 155.0561, rather than except as provided by Subsection (a-1), to pass each part of an examination within three attempts.

SECTION 7. Amends Subchapter B, Chapter 155, Occupations Code, by adding 155.0561, as follows:

Sec. 155.0561. EXCEPTIONS TO EXAMINATION ATTEMPT LIMITS FOR CERTAIN OUT-OF-STATE APPLICANTS. (a) Defines "active practice" and "full license."

(b) Provides that this section applies only to an applicant who:

(1) has successfully completed a graduate medical education program approved by TMB;

(2) holds a full license and is in good standing as a physician in another state or Canada;

(3) does not hold and has never held a medical license subject to any restriction, disciplinary order, or probation;

(4) is not and has never been the subject of a peer review that has resulted or may result in limitation, restriction, suspension, or other adverse impact on the applicant's hospital or other medical facility privileges; and

(5) is not under investigation by any licensing or law enforcement agency.

(c) Provides that an applicant described by Subsection (b) who has held a full license and been in active practice for at least one year but less than five years and has passed within three attempts all but one part of the examination approved by TMB is considered to have satisfied the examination requirements of this chapter (License to Practice Medicine) if the applicant passed the remaining part of the examination within:

(1) one additional attempt; or

(2) three additional attempts, if the applicant is specialty board certified by a specialty board that is:

(A) a member of the American Board of Medical Specialties; or

(B) approved by the American Osteopathic Association.

(d) Provides that an applicant described by Subsection (b) who has held a full license and been in active practice for at least five years is considered to have satisfied the examination requirements of this chapter regardless of the type of examination the applicant passed or the number of attempts within which the applicant passed the examination or any part of the examination.

SECTION 8. Amends Section 162.106, Occupations Code, as follows:

Sec. 162.106. INSPECTIONS. (a) Authorizes TMB to conduct inspections of a physician's equipment and office procedures that relate to the provision of anesthesia in an outpatient setting as necessary to enforce this subchapter (Anesthesia in Outpatient Setting), rather than to conduct inspections to enforce this subchapter, including inspections of an office site and of documents of a physician's practice that relate to the provision of anesthesia in an outpatient setting.

(b) Authorizes TMB to establish a risk-based inspection process in which TMB conducts inspections based on the length of time since the equipment and outpatient setting were last inspected and the physician submitted to inspection.

(c) Creates this subsection from existing text and makes no further changes to this subsection.

(d) Redesignates existing Subsection (b) as this subsection and makes no further changes to this subsection.

(e) Requires TMB to maintain a record of the outpatient settings in which physicians provide anesthesia.

(f) Requires a physician who provides anesthesia in an outpatient setting to inform TMB of any other physician with whom the physician shares equipment used to administer anesthesia.

(g) Redesignates existing Subsection (c) as this subsection.

SECTION 9. Amends Section 164.0015(d), Occupations Code, as follows:

(d) Prohibits TMB from issuing a remedial plan to resolve a complaint against a license holder if the license holder has entered into a remedial plan with TMB in the preceding five years, rather if the license holder has previously entered into a remedial plan with TMB for the resolution of a different complaint relating to this subtitle.

SECTION 10. Amends Section 164.003, Occupations Code, by amending Subsections (b) and (f) and adding Subsection (f-1), as follows:

(b) Requires rules adopted under this section (Informal Proceedings) to require that:

(1)–(4) makes no changes to these subdivisions;

(5)–(6) makes nonsubstantive changes to these subdivisions; and

(7) if the complaint includes an allegation that the license holder has violated the standard of care, the panel conducting the informal proceeding consider whether the physician was practicing complementary and alternative medicine.

(f) Provides that if the complaint includes an allegation that the license holder has violated the standard of care, the notice required by Subsection (b)(2) is required to include a copy of each report prepared by an expert physician reviewer under Section 154.0561 (Procedures For Expert Physician Review), rather than to include a copy of the report by the expert physician reviewer.

(f-1) Requires TMB, before providing a report to a license holder under Subsection (f), to redact any identifying information of an expert physician reviewer other than the specialty of the expert physician reviewer.

SECTION 11. Amends Sections 164.005(a) and (c), Occupations Code, as follows:

(a) Deletes existing text requiring a formal complaint as defined for purposes of this section (Initiation of Charges; Formal Complaint) to be made under oath.

(c) Requires a charge to be filed, rather than be in the form of a written affidavit that is filed, with TMB's records custodian or assistant records custodian and to detail the nature of the charge as required by this subtitle or other applicable law. Makes nonsubstantive changes.

SECTION 12. Amends Sections 164.006(a) and (b), Occupations Code, as follows:

(a) Requires notice to the respondent of a hearing about the charges against the person to be served in accordance with Chapter 2001 (Administrative Procedure), Government Code, and by certified mail, rather than requiring service of process to notify the respondent of a hearing to be served in accordance with Chapter 2001, Government Code. Makes nonsubstantive changes.

(b) Makes a conforming change to this subsection.

SECTION 13. Amends Chapter 167, Occupations Code, by adding Sections 167.012 and 167.013, as follows:

Sec. 167.012. MEMORANDUM OF UNDERSTANDING WITH BOARD. Requires the governing board of the Texas Physician Health Program established under this chapter (governing board; program) and TMB to enter into a memorandum of understanding to better coordinate services and operations of the program. Requires the memorandum of understanding to be adopted by rule and:

(1) establish performance measures for the program, including the number of participants who successfully complete the program;

(2) include a list of services TMB will provide for the program; and

(3) require that an internal audit of TMB be conducted at least once every three years to ensure the program is properly documenting and referring all noncompliance to TMB.

Sec. 167.013. GIFTS, GRANTS, AND DONATIONS. Authorizes the governing board, in addition to any fees paid to TMB or money appropriated to TMB for the program, to receive and accept a gift, grant, donation, or other thing of value from any source, including the United States or a private source, for the program.

SECTION 14. Amends Section 205.057, Occupations Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Deletes the designation of existing Subdivision (3) and creates Subdivision (2) from existing text of Subdivisions (2) and (3), redesignates existing Subdivision (4) as Subdivision (3), deletes existing text of Subdivision (5) relating to the current budget of the Texas Board of Acupuncture Examiners (TSBAE) and creates Subdivision (5) from existing Subdivision (6), redesignates existing Subdivisions (7)–(8) as Subdivisions (6)–(7), and makes nonsubstantive changes. Requires the training program to provide the person with information regarding:

- (1) the law governing TSBAE operations, rather than this chapter (Acupuncture);
- (2) the programs, functions, rules and budget of TSBAE, rather than the programs operated by TSBAE and the role and functions of TSBAE;
- (3) the scope of and limitations on the rulemaking authority of, rather than the rules of, TSBAE;
- (4) the types of TSBAE rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting or impacting prices charged by persons engaged in a profession or business TSBAE regulates, including any rule, interpretation, or enforcement action that:
  - (A) regulates the scope of practice of persons in a profession or business that TSBAE regulates;
  - (B) restricts advertising by persons in a profession or business TSBAE regulates;
  - (C) affects the price of goods or services provided by persons in a profession or business TSBAE regulates; or
  - (D) restricts participation in a profession or business TSBAE regulates;
- (5) makes no further changes to this subdivision;
- (6) the requirements of laws relating to open meetings, public information, administrative procedure, and disclosure of conflicts of interest and other laws applicable to members of TSBAE in performing their duties; and
- (7) makes no further changes to this subdivision;

(d) Requires the executive director of TSBAE to create a training manual that includes the information required by Subsection (b). Requires the executive director of TSBAE to distribute a copy of the training manual annually to each TSBAE member. Requires each TSBAE member to sign and submit to the executive director of TSBAE a statement acknowledging that the member received and has reviewed the training manual.

SECTION 15. Amends Subchapter E, Chapter 205, Occupations Code, by adding Section 205.2025, as follows:

Sec. 205.2025. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE ISSUANCE. (a) Requires TSBAE to require that an applicant for a

license submit a complete and legible set of fingerprints, on a form prescribed by TMB, to TMB or the Department of Public Safety of the State of Texas (DPS) for the purpose of obtaining criminal history record information from DPS and the Federal Bureau of Investigation (FBI).

(b) Prohibits TSBAE from issuing a license to a person who does not comply with the requirement of Subsection (a).

(c) Requires TSBAE to conduct a criminal history record information check of each applicant for a license using information provided by the individual under this section and made available to TMB by DPS, the FBI, and any other criminal justice agency under Chapter 411 (Department of Public Safety of the State of Texas), Government Code.

(d) Authorizes TSBAE to enter into an agreement with DPS to administer a criminal history record information check required under this section and to authorize DPS to collect from each applicant the costs incurred by DPS in conducting the criminal history record information check.

SECTION 16. Amends Subchapter F, Chapter 205, Occupations Code, by adding Section 205.2515, as follows:

Sec. 205.2515. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR RENEWAL. (a) Requires an applicant for renewal of a license issued under this chapter to submit a complete and legible set of fingerprints for purposes of performing a criminal history record information check of the applicant as provided by Section 205.2025.

(b) Authorizes TSBAE to administratively suspend or refuse to renew the license of a person who does not comply with the requirement of Subsection (a).

(c) Provides that a license holder is not required to submit fingerprints under this section for the renewal of the license if the holder has previously submitted fingerprints under Section 205.2025 for the initial issuance of the license or under this section as part of a prior renewal of a license.

SECTION 17. Amends Subchapter E, Chapter 206, Occupations Code, by adding Section 206.2025, as follows:

Sec. 206.2025. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE ISSUANCE. (a) Requires TMB to require that an applicant for a license submit a complete and legible set of fingerprints, on a form prescribed by TMB, to TMB or to DPS for the purpose of obtaining criminal history record information from DPS and the FBI.

(b) Prohibits TMB from issuing a license to a person who does not comply with the requirement of Subsection (a).

(c) Requires TMB to conduct a criminal history record information check of each applicant for a license using information provided by the individual under this section and made available to TMB by DPS, the FBI, and any other criminal justice agency under Chapter 411, Government Code.

(d) Authorizes TMB to enter into an agreement with DPS to administer a criminal history record information check required under this section and to authorize DPS to collect from each applicant the costs incurred by DPS in conducting the criminal history record information check.

SECTION 18. Amends Section 206.203(a), Occupations Code, to delete existing text requiring a person, except as provided by Section 206.206 (Temporary License), to be eligible for a license, to be of good moral character and to make nonsubstantive changes.

SECTION 19. Amends Subchapter E, Chapter 206, Occupations Code, by adding Section 206.2105, as follows:

Sec. 206.2105. **CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR RENEWAL.** (a) Requires an applicant for renewal of a license issued under this chapter (Surgical Assistants) to submit a complete and legible set of fingerprints for purposes of performing a criminal history record information check of the applicant as provided by Section 206.2025.

(b) Authorizes TMB to administratively suspend or refuse to renew the license of a person who does not comply with the requirement of Subsection (a).

(c) Provides that a license holder is not required to submit fingerprints under this section for the renewal of the license if the holder has previously submitted fingerprints under Section 206.2025 for the initial issuance of the license or under this section as part of a prior renewal of a license.

SECTION 20. Amends Section 601.002, Occupations Code, by adding Subdivisions (10-a) and (10-b) to define "radiologist" and "radiologist assistant."

SECTION 21. Amends Section 601.030, Occupations Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Creates Subdivision (2) from existing text, redesignates existing Subdivision (3) as Subdivision (6), and makes nonsubstantive changes. Requires the training program to provide the person with information regarding:

(1) the law governing Texas Board of Medical Radiologic Technology (advisory board) operations;

(2) the programs, functions, rules, and budget of the advisory board, rather than this chapter (Medical Radiologic Technologists) and the advisory board's programs, functions, rules and budget;

(3) the scope of and limitations on the rulemaking authority of the advisory board;

(4) the types of advisory board rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business the advisory board regulates, including any rule, interpretation, or enforcement action that:

(A) regulates the scope of practice of persons in a profession or business that the advisory board regulates;

(B) restricts advertising by persons in a profession or business the advisory board regulates;

(C) affects the price of goods or services provided by persons in a profession or business the advisory board regulates; or

(D) restricts participation in a profession or business the advisory board regulates;

(5) redesignates existing Subdivision (2) as this subdivision and makes no further changes;



(6) the requirements of laws relating to open meetings, public information, administrative procedure, and disclosure of conflicts of interest and other laws applicable to members of the advisory board in performing their duties; and

(7) redesignates Subdivision (4) as this subdivision and makes no further changes.

(d) Requires the executive director to create a training manual that includes the information required by Subsection (b). Requires the executive director to distribute a copy of the training manual annually to each advisory board member. Requires each advisory board member to sign and submit to the executive director a statement acknowledging that the member received and has reviewed the training manual.

SECTION 22. Amends Sections 601.102(b) and (c), Occupations Code, as follows:

(b) Authorizes the advisory board to issue to a person:

(1)–(2) makes nonsubstantive changes to these subdivisions; or

(3) a radiologist assistant certificate to a person who meets the requirements established under Section 601.1021.

(c) Authorizes the advisory board to issue to a person a temporary general certificate, a temporary limited certificate, or a temporary radiologist assistant certificate, rather than a temporary general certificate or a temporary limited certificate, that authorizes the person to perform radiologic procedures for a period not to exceed one year.

SECTION 23. Amends Subchapter C, Chapter 601, Occupations Code, by adding Section 601.1021, as follows:

Sec. 601.1021. RADIOLOGIST ASSISTANT CERTIFICATE. (a) Requires the advisory board by rule to establish the education and training required for a person to obtain a radiologist assistant certificate.

(b) Provides that a radiologist assistant certificate holder:

(1) is authorized to perform radiologic procedures only under the supervision of a radiologist; and

(2) is prohibited from interpreting images, making diagnoses, or prescribing any medication or therapy.

SECTION 24. Amends Section 604.030, Occupations Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Creates Subdivision (2) from existing text, redesignates existing Subdivision (3) as Subdivision (6), and makes nonsubstantive changes. Requires the training program to provide the person with information regarding:

(1) the law governing the Texas Board of Respiratory Care (board) operations;

(2) the programs, functions, rules, and budget of the board, rather than this chapter (Respiratory Care Practitioners) and the board's programs, functions, rules and budget;

(3) the scope of and limitations on the rulemaking authority of the board;

(4) the types of board rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting or impacting prices charged by persons engaged in a profession or business the board regulates, including any rule, interpretation, or enforcement action that:

(A) regulates the scope of practice of persons in a profession or business that the board regulates;

(B) restricts advertising by persons in a profession or business board regulates;

(C) affects the price of goods or services provided by persons in a profession or business the board regulates; or

(D) restricts participation in a profession or the business the board regulates;

(5) redesignates existing Subdivision (2) as this subdivision and makes no further changes;

(6) the requirements of laws relating to open meetings, public information, administrative procedure, and disclosure of conflicts of interest and other laws applicable to members of the board in performing their duties; and

(7) redesignates existing Subdivision (4) as this subdivision and makes no further changes.

(d) Requires the executive director to create a training manual that includes the information required by Subsection (b). Requires the executive director to distribute a copy of the training manual annually to each board member. Requires each board member to sign and submit to the executive director a statement acknowledging that the member received and has reviewed the training manual.

SECTION 25. Repealer: Section 155.056(c) (relating to the number of allowed application attempts for an applicant who held a physician-in-training permit or had an application for that permit pending on a certain date), Occupations Code.

Repealer: Section 155.056(d) (relating to the inapplicability of the limitation on examination attempts to an applicant who meets certain requirements), Occupations Code.

SECTION 26. (a) Provides that Sections 152.010, 205.057, 601.030, and 604.030, Occupations Code, as amended by this Act, apply to a member of the applicable board appointed before, on, or after the effective date of this Act, except as provided by Subsection (b) of this section.

(b) Provides that a member of a board who, before the effective date of this Act, completed the training program required by Section 152.010, 205.057, 601.030, or 604.030, Occupations Code, as the applicable law existed before the effective date of this Act, is only required to complete additional training on subjects added by this Act to the training program required by, as applicable, Sections 152.010, 205.057, 601.030, or 604.030, Occupations Code, as amended by this Act. Prohibits a board member described by this subsection from voting, deliberating, or being counted as a member in attendance at a meeting of the applicable board held on or after December 1, 2019, until the member completes the additional training.

SECTION 27. Requires TMB, not later than March 1, 2020, to adopt rules necessary to implement Section 164.003(b), Occupations Code, as amended by this Act.

SECTION 28. Requires TMB and the governing board of the Texas Physician Health Program, not later than January 1, 2020, by rule to adopt the memorandum of understanding required by Section 167.012, Occupations Code, as added by this Act.

SECTION 29. Requires TSBAE and TMB to obtain, not later than September 1, 2021, criminal history record information on each person who, on the effective date of this Act, holds a license

issued under Chapter 205 or 206, Occupations Code, as applicable, and did not undergo a criminal history record information check based on the license holder's fingerprints on the initial application for the license. Authorizes a board to suspend the license of a license holder who does not provide the criminal history record information as required by the board and this section.

SECTION 30. Requires TMB, not later than January 1, 2020, to approve the rules required by Section 601.1021, Occupations Code, as added by this Act.

SECTION 31. Effective date: September 1, 2019.