

SUBJECT: Confidentiality for public hospital medical committees

COMMITTEE: Public Health — committee substitute recommended

VOTE: 8 ayes — Gray, Coleman, Capelo, Delisi, Glaze, Hilderbran, Maxey, Uresti
0 nays
1 absent — McClendon

WITNESSES: (*On original bill:*)
For —None
Against —Tommy Jacks, Texas Trial Lawyers Association
On —Matthew T. Wall, Texas Hospital Association

BACKGROUND: The Medical Practice Act, Art. 4495b, VTCS, authorizes certain health care entities to form a medical peer review committee or professional review body to evaluate the medical or health-care services provided by each respective entity. A medical peer review committee or professional review body is defined as a committee of a health-care entity, the governing board, or the medical staff approved by the hospital board.

Under Health and Safety Code sec. 161.032, the records and proceedings of a medical committee are confidential and not subject to court subpoena. The Open Meetings Act, ch. 551, Government Code, requires all meetings of a governmental body to be open to the public, with certain exceptions provided in the law.

DIGEST: CSHB 747 would amend the Medical Practice Act to include the governing body of a public hospital owned or run by a government entity, the governing body of a hospital authority, and a hospital district in the definition of a medical peer review committee or professional review body.

These entities would be considered medical committees, and therefore subject to the confidentiality provision, only for the purpose of evaluating the competence of a physician or the quality of medical and health care services

provided by the hospital. To be confidential, the evaluations would have to involve discussions or records that specifically or necessarily identified an individual patient or physician.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

**SUPPORTERS
SAY:**

The process of peer review benefits hospitals, doctors, and patients. Doctors have the opportunity to discuss patients and procedures openly and to evaluate one another. This process should be conducted confidentially, without fear of potential lawsuits.

The law does not clearly protect peer review confidentiality in cases where the governing body of a public hospital, hospital district, or hospital authority conducts a meeting to evaluate the competence of a physician or the quality of medical and health care services. Since these entities also are public bodies, they are subject to the Open Meetings Act.

This confidentiality exemption that CSHB 747 would allow would be extremely limited. The bill would allow confidentiality and closed meetings of governing boards of these entities only in relation to peer review committee evaluations. The governing boards of public hospitals, hospital districts, and hospital authorities often act in a peer review capacity and need this protection. HB 747 also would benefit rural areas of Texas where fewer doctors are available to fill the roles of both governing board and peer review.

The confidentiality provision would be more narrow and specific for public boards in their peer review capacity than for private medical committees. Confidentiality would apply when the governing body reviewed the competence of a physician, which already could be confidential under the personnel review exception to the Open Meetings Acts. It also would apply to evaluations of the care being given by the hospital. In both cases, confidentiality would be limited to discussions or records that specifically or necessarily would identify an individual patient or physician. This narrow exception would be well within the range of other open meetings and open records exceptions for all governmental bodies.

OPPONENTS
SAY:

This bill is too broad and would allow closed meetings and records that evaluate not only the competence of a physician but the quality of medical and health-care services provided by the hospital. The Open Meetings Act is intended to safeguard the public interest, and discussions about the competence of the staff or the quality of care of a public hospital are matters that the public, and the taxpayers who pay for these public institutions, have a right to know.

Even under current law, the peer review confidentiality protection can be abused and used to cover up physician or hospital mistakes that could lead to medical malpractice suits. HB 747 would extend the confidentiality protection even further to include the governing bodies of public hospitals when they act as peer review committees.

NOTES:

The original version of HB 747 would have allowed a governing board of a public hospital to maintain confidentiality in relation to the evaluation of the competence of a physician *or* the quality of medical and health care services, to the extent that the evaluation involved discussions or records that *could* identify an individual patient or physician.