

- SUBJECT:** Authorizing additional FQHC's to hire physicians directly
- COMMITTEE:** Border and International Affairs — committee substitute recommended
- VOTE:** 5 ayes — Chavez, Griggs, Alonzo, Merritt, Vo
0 nays
2 absent — Castro, J. Moreno
- WITNESSES:** (*On committee substitute:*)
For — Hal Katz, El Paso County Hospital District; (*Registered, but did not testify:* David Pearson, Texas Organization of Rural and Community Hospitals; Matt Wall, Texas Hospital Association; Miguel Teran)
Against — None
- BACKGROUND:** Federally Qualified Health Centers (FQHCs) are public or not-for-profit health centers with consumer boards that serve federally designated, medically underserved areas or populations and that offer services regardless of a client's ability to pay. These centers receive federal grants through sec. 330 of the federal Public Health Service Act and are qualified to receive cost-based reimbursement under Medicaid and Medicare. In addition, Medicare pays for some health services at FQHCs that usually are not covered, such as preventive care.
- To be designated an FQHC, a center must meet strict requirements in the Social Security Act, such as offering a specific set of services at the center to all who qualify. Governance requirements also stipulate the size and composition of an FQHC's board of directors. An FQHC must have a board with between nine and 25 members, the majority of whom must be consumers, defined as those who receive the majority of their health care at the FQHC.
- Texas has 42 FQHCs, two of which are community health centers funded by public entities — the Travis County Health Department and the Galveston County Health District.

Occupations Code, Title 3, the Texas Medical Practice Act, prohibits the "corporate practice of medicine," a legal doctrine that generally prohibits non-physicians from practicing medicine, which can limit the employment of physicians. In most cases, a non-physician entity, such as a corporation, is prohibited from directly employing physicians. At some hospitals, physicians may be contractors and not direct employees. Public health departments, the state Department of State Health Services, and teaching hospitals are among the organizations expressly exempted from the prohibition and may directly employ physicians. FQHCs that are non-profit organizations also are exempt and may employ physicians directly, but FQHCs that are public entities are not expressly exempt.

Occupations Code, sec. 162.001(c) requires the Texas State Board of Medical Examiners to certify certain health organizations to contract with or employ physicians licensed by the board.

The Federal Tort Claims Act generally governs the limited waiver of the federal government's sovereign immunity when its employees are negligent within the scope of their employment. A physician employed by, or in some cases under contract with, an FQHC is not required to carry medical malpractice insurance because the federal act assumes the liability for legal awards. For a physician to obtain protection through the federal act as a contractor, the majority of physicians at the FQHC must be employees.

DIGEST: CSHB 1924 would permit the State Board of Medical Examiners to certify public-entity FQHCs located in counties that border the United Mexican States.

The bill would take effect September 1, 2005.

SUPPORTERS SAY: CSHB 1924 would fix a very specific problem. The El Paso hospital district's community-owned hospital, Thomason Hospital, is in the process of becoming an FQHC. Medical malpractice rates are particularly high along the border, and in the event Thomason became an FQHC, it should be able to hire physicians directly so that they could have protection under the Federal Tort Claims Act.

This bill would not erode the prohibition against the corporate practice of medicine because it would be limited in scope and would treat publicly owned FQHCs along the border the same as other non-profit FQHCs. In

addition, the medical care that FQHCs deliver is determined by federal guidelines developed with significant physician input, not by a profit-seeking corporation. The prohibition on the corporate practice of medicine guards against conflicts that would not arise within an FQHC.

OPPONENTS
SAY:

The prohibition against the corporate practice of medicine would be compromised if the law became riddled with exceptions. Even if exempting FQHC's along the border would not involve very many facilities, it would weaken the general prohibition. Texas should be wary of permitting non-physicians to make medical decisions that affect Texas patients.

OTHER
OPPONENTS
SAY:

This bill is too limited in scope and should permit all FQHCs to employ physicians directly so that the Federal Tort Claims Act would be in force. By definition, an FQHC must deliver high-quality health care, including preventative care and pharmacy benefits, to underserved areas. Doctors who treat patients at any FQHC – not just those along the border – deserve the protection that the Federal Tort Claims Act offers. Two publicly owned community health FQHCs, one in Austin and the other in Galveston, would benefit. Houston and Dallas also each have FQHCs that treat homeless people.

Some physicians are misguided in their concern that permitting all FQHCs to employ doctors directly could change the prohibition against the corporate practice of medicine. That doctrine is vital in preventing companies that are not health care organizations from operating without physician involvement in making medical decisions. FQHCs simply do not fall into that group.

NOTES:

The committee substitute reformatted the bill as filed but did not make any substantive changes.