

SUBJECT: Employment of physicians by certain hospitals

COMMITTEE: County Affairs — committee substitute recommended

VOTE: 9 ayes — Coleman, Morrison, Berman, Bolton, Castro, J. Davis, Marquez, Sheffield, W. Smith

0 nays

SENATE VOTE: On final passage, April 21 — 23-6 (Davis, Deuell, Huffman, Nelson, Patrick, Wentworth)

WITNESSES: For — Charles Bailey, Texas Hospital Association; Yvonne Blue, Moore County Hospital District; Weldon Green; John Henderson, Childress Regional Medical Center; Lance Keilers, Ballinger Memorial Hospital District; Ron Luke, Texas Association of Business; Don McBeath, Texas Organization of Rural & Community Hospitals; (*Registered, but did not testify:* Ed Berger, Seton Family of Hospitals; Rick Rickard, North Runnels Hospital; Kandice Sanaie, Texas Association of Business)

Against — Dan McCoy, Texas Medical Association

BACKGROUND: The Medical Practice Act, Occupations Code, Title 3, Subtitle B contains a variety of provisions construed to prohibit the direct employment of a doctor by a corporation, including hospitals. For example, Occupations Code, secs. 164.052 (8) and (17) prohibit physicians from selling or bartering their medical licenses or aiding or abetting the practice of medicine by a person, partnership, association, or corporation that is not licensed to practice medicine. Exceptions have been made for certain types of entities such as private, nonprofit medical schools and federally qualified health care centers, and about 10 hospital districts have received specific exemptions.

The Dallas County Hospital District performs business as the Parkland Health and Hospital System.

Critical access hospitals are rural public, non-profit, or for-profit hospitals that maintain no more than 25 inpatient beds and are located more than a 35-mile drive from any other hospital.

Sole community hospitals are located more than 35 miles from other like hospitals or could be rural hospitals that meet at least one other criterion regarding the distance from other health facilities and characteristics of the population served.

DIGEST: CSSB 1500 would allow the Dallas County Hospital District and certain small, rural hospitals to employ physicians.

Dallas County Hospital District. The Dallas County Hospital District could appoint, contract for, or employ physicians, dentists, and other health care providers. An employment contract could not exceed four years. Employment of physicians could occur only to fulfill the district's mandate to provide medical care for the indigent and needy residents of the district.

The bill would specify that these provisions did not authorize the board of the Dallas County Hospital District to supervise or control the practice of medicine. For all matters relating to the practice of medicine, each employed physician ultimately would report to the chief medical officer of the district.

The district would establish a committee of five physicians who would ensure district policies allowed employed physicians to exercise independent medical judgment in providing care to patients. Each member of the committee biennially would provide a signed, verified statement indicating the member would exercise independent medical judgment in all committee matters and would report to the Texas Medical Board any event that the member believed in good faith constituted a compromise of the independent medical judgment of a physician in caring for a patient. Committee members would have to disclose financial conflicts of interest.

Physician employment by certain small, rural hospitals. Critical access or sole community hospitals that had a medical staff of 15 or fewer physicians could employ a physician if the hospital was a certified non-profit health corporation that met applicable statutory and Texas Medical Board requirements. The bill would establish guidelines for the policies a hospital would be required to adopt and enforce to ensure that an

employed physician exercised independent medical judgment in the care of patients.

A hospital would give equal consideration regarding the issuance of credentials and privileges to physicians employed by the hospital and not employed by the hospital. All of a hospital's physicians would be subject to the same standards and procedures. A hospital's by-laws could not discriminate against or favor a physician based on the physician's employment status, including emergency call or charity care obligations.

The bill would establish prohibitions on a hospital terminating, retaliating against, or otherwise penalizing a person who reported a violation of corporate practice of medicine statutes, laws regulating nonprofit health corporations, or Medical Board rules. A physician making a report in good faith would be immune from civil liability or discipline by the Texas Medical Board. Termination of a physician's employment would be subject to a fair review process. A physician's employment agreement could not set goals or performance standards for the volume of referrals the physician made for admissions or medical procedures.

The Texas Medical Board could charge a reasonable fee to certify a nonprofit health corporation that employed physicians and to investigate the organization's compliance with applicable laws. Fines and administrative remedies could be applied for violations. The bill would establish documentation requirements for a biennial compliance statement required of nonprofit health corporations that employed physicians.

The bill would take effect September 1, 2009.

**SUPPORTERS
SAY:**

CSSB 1500 would allow the Parkland Hospital System and certain small, rural hospitals to employ physicians to ensure adequate staffing to meet the needs of the populations they serve. The bill would establish mechanisms to ensure physicians could exert their independent medical judgment without influence from the hospital employing them.

The bill would confine the smaller hospitals that were granted the right to employ physicians to those with 15 or fewer physicians that were critical access or sole community hospitals. These designations indicate the particular need of these hospitals to have flexibility in hiring practices because they provide health services to populations with limited access to health care. Since contract physicians earn a living according to the

volume of patients they see and the number of procedures they perform, contracting with rural hospitals may not provide adequate patient volume for physicians to pay administrative costs for their practice. The bill would allow the rural hospitals most in need to recruit physicians with an employment package that would afford a stable salary and defined benefits.

The Parkland Health System has a mandate to provide medical care for the indigent and needy residents of the district. Because these residents often are unable to pay for their health services, it is difficult to maintain adequate staffing to serve their needs. The bill would acknowledge Parkland's unique circumstances in needing to provide a salary to doctors who served patients whose payments would not be sufficient to compensate a contracted doctor.

The bill would have many safeguards for physicians to protect their independent medical judgment. Employed Parkland physicians ultimately would report to the chief medical officer, and their policies would be governed by a committee of physicians. Safeguards for the rural hospitals would include whistleblower protections and policies designed to provide equal privileges to and equal work requirements upon employed and contracted physicians. Employment would be optional and not mandatory for physicians if they were concerned about retaining independence in their medical practice.

Texas already allows physicians to own hospitals and doctors to be employees of state medical schools, community health centers, and almost a dozen rural hospitals. Many states have no prohibitions on hospital employment of physicians.

OPPONENTS SAY:

CSSB 1500 would allow more hospitals to employ physicians, a practice that never should occur because it interferes with the physician's ability to exercise independent medical judgment. The patient's care and safety should come before those of a hospital, yet it is impossible for an employed physician to act independently of this influence. Even if the physician reported to a medical professional, that physician's salary and benefits would be tied to the administration by a layperson of a corporate entity with incentives to minimize the hospital's operating budget.

NOTES:

The Senate-passed version of the bill did not include provisions allowing the Parkland Health System to employ physicians. The provisions

allowing small, rural hospitals to employ physicians would have applied to critical access and sole community hospitals in a county with a population of 50,000 or less. The Senate-passed bill did not include certain provisions relating to hospitals that employed physicians, including by-laws requirements, fair review of terminations, peer review and quality assurance of these hospitals, or non-retaliation requirements.