

BILL ANALYSIS

Senate Research Center
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S.B. 1331
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, the Texas Medical Board (TMB) can recommend that a physician participate in a rehabilitation program if the physician suffers from mental, physical, or substance abuse issues and can refer a physician to treatment and counseling. However, physicians are often fearful of self reporting mental health and substance abuse issues because they fear disciplinary action if they have difficulty combating those mental health and substance abuse issues. Additionally TMB does not have any specialized expertise in dealing with mental health and substance abuse issues, so when a physician has difficulty combating their problems TMB is unable to assess whether the difficulties are typical of recovery or due to not participating in the program.

As proposed, S.B. 1331 establishes a specially tailored confidential Texas Physician Health Program (program) to deal with physician mental health and substance abuse issues which will encourage physicians and physician assistants to receive treatment for mental health and substance abuse issues before placing patient safety in danger. The bill requires the program to be overseen by experts in mental health and substance abuse issues who provide a course of treatment for physicians and monitor their progress through the program.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Medical Board in SECTION 1 (Sections 167.003, 167.004, 167.006, and 167.011, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle B, Title 3, Occupations Code, by adding Chapter 167, as follows:

CHAPTER 167. TEXAS PHYSICIAN HEALTH PROGRAM

Sec. 167.001. DEFINITIONS. Defines "committee," "governing board," "medical director," "physician assistant board," "program," and "program participant."

Sec. 167.002. MEDICAL DIRECTOR. (a) Requires the Texas Medical Board (TMB) to appoint a medical director for the Texas Physician Health Program (program).

(b) Requires the medical director to be a physician licensed by TMB and have expertise in a field of medicine relating to disorders commonly affecting physicians or physicians assistants, including substance abuse disorders.

(c) Requires the medical director to provide clinical and policy oversight for the program.

Sec. 167.003. GOVERNING BOARD. (a) Requires the president of TMB to appoint persons to serve on the governing board of the program. Requires the appointees to include physicians, physician assistants, and other related professionals with experience in addressing health conditions commonly found in the population of monitored physicians or physician assistants.

(b) Requires the governing board to provide advice and counsel to TMB, and establish policy and procedures for the operation and administration of the program.

(c) Requires TMB, with the advice and in consultation with the physician assistant board (PAB) and Texas-based professional associations of physicians and physician assistants, to adopt rules relating to the appointment of members to the governing board, including length of terms, procedures for filling a vacancy, and conflict-of-interest provisions.

Sec. 167.004. PHYSICIAN HEALTH AND REHABILITATION ADVISORY COMMITTEE. (a) Requires the governing board to appoint physicians to the Physician Health and Rehabilitation Advisory Committee (committee) who have experience in disorders commonly affecting physicians or physician assistants.

(b) Requires the committee to assist the governing board by making recommendations on the request of the governing board.

(c) Requires TMB, with the advice and in consultation with PAB and Texas-based professional associations of physicians and physician assistants, to adopt rules relating to the appointment of members to the committee, including length of terms, procedures for filling a vacancy, and conflict-of-interest provisions.

(d) Provides that Chapter 2110 (State Agency Advisory Committees), Government Code, does not apply to the committee.

Sec. 167.005. TEXAS PHYSICIAN HEALTH PROGRAM. (a) Provides that the program is established to promote physician and physician assistant wellness; and treatment of all health conditions that have the potential to compromise the physician's or physician assistant's ability to practice with reasonable skill and safety, including mental health issues, substance abuse issues, and addiction issues.

(b) Provides that the program is a confidential, nondisciplinary therapeutic program for physicians and physician assistants.

(c) Provides that the program is administratively attached to TMB.

Sec. 167.006. RULES. Requires TMB, with the advice of and in consultation with the governing board, committee, and Texas-based professional associations of physicians and physician assistants to:

(1) adopt rules and policies as necessary to implement the program, including policies for assessments under the program and guidelines for the validity of a referral to the program; policies and guidelines for initial contacts used to determine if there is a need for a physician or physician assistant to complete a clinically appropriate evaluation or to enter treatment, including policies and guidelines for arrangements for that evaluation or treatment; and policies and guidelines for interventions conducted under the program; and

(2) define applicable guidelines for the management of substance abuse disorders, psychiatric disorders, and physical illnesses and impairments.

Sec. 167.007. OPERATION OF PROGRAM. (a) Requires that the program include provisions for:

(1) continuing care, monitoring, and case management of potentially impairing health conditions, including provisions for cooperation with the evaluating or treating facility;

(2) ongoing monitoring for relapse, including random drug testing, consultations with other physician health and rehabilitation committees, work site monitors, and treating health professionals, including mental health professionals; and

(3) other physician and physician assistant health and rehabilitation programs to operate under an agreement with the program, using established guidelines to ensure uniformity and credibility of services throughout this state.

(b) Requires that the program ensure appropriate communications with TMB, PAB, other state licensing boards, and physician health and rehabilitation programs.

(c) Requires that the program use physicians or other health care professional experts or consultants, as appropriate, when necessary to evaluate, recommend solutions for, or resolve a medical dispute.

Sec. 167.008. REFERRALS TO PROGRAM. (a) Requires that the program accept a self referral from a physician or physician assistant and referrals from an individual, a physician health and rehabilitation committee, a physician assistant organization, a state physician health program, a hospital or hospital system licensed in this state, a residency program, TMB, or PAB.

(b) Authorizes a physician or physician assistant to refer the physician or physician assistant to the program.

(c) Prohibits the program from accepting a referral, except as provided by TMB rules, for a violation of the standard of care as a result of drugs or alcohol or boundary violations with a patient or a patient's family.

Sec. 167.009. REFERRAL BY BOARD OR PHYSICIAN ASSISTANT BOARD AS PREREQUISITE FOR ISSUING OR MAINTAINING A LICENSE. (a) Authorizes TMB or PAB, through an agreed order or after a contested proceeding, to make a referral to the program and require participation in the program by a specified physician or physician assistant as a prerequisite for issuing or maintaining a license under Chapter 155 (License to Practice Medicine) or 204 (Physician Assistants).

(b) Authorizes TMB or PAB to discipline a physician or physician assistant required to participate in the program under Subsection (a) who does not participate in the program.

(c) Provides that each program participant is individually responsible for payment of the participant's own medical costs, including any required evaluations, primary treatment, and continuing care.

Sec. 167.010. CONFIDENTIALITY. (a) Provides that each referral, proceeding, report, investigative file, record, or other information received, gathered, created, or maintained by the program or its employees, consultants, work site monitors, or agents relating to a physician or physician assistant is privileged and confidential and is not subject to disclosure under Chapter 552 (Public Information), Government Code, or to discovery, subpoena, or other means or legal compulsion for release to any person except as provided by this chapter.

(b) Authorizes the program, notwithstanding Subsection (a), to report to TMB or PAB, as appropriate, the name and pertinent information relating to impairment of a physician or physician assistant.

(c) Requires that the program, notwithstanding Subsection (a), make a report to TMB or PAB, as appropriate, regarding a physician or physician assistant if the medical director or the governing board determines that the physician or physician assistant poses a continuing threat to the public welfare. Requires that a report under this subsection, if requested by TMB or PAB, include all information in the possession or control of the program.

Sec. 167.011. FUNDING; FEES. (a) Provides that the program account is a special account in the general revenue fund. Authorizes funds in the account to be appropriated only to TMB for administration of the program.

(b) Requires TMB by rule to set and collect reasonable and necessary fees from program participants in amounts sufficient to offset, to the extent reasonably possible, the cost of administering this chapter.

(c) Requires each program participant to pay an annual fee to partially offset the cost of participation and monitoring services.

(d) Requires TMB to deposit fees collected under this section to the credit of the account established under Subsection (a).

(e) Authorizes TMB to grant a waiver to the fee imposed upon Subsection (c). Requires TMB to adopt rules relating to the issuance of a waiver under this subsection.

SECTION 2. Amends Section 153.051(d), Occupations Code, to prohibit TMB from setting, charging, collecting, receiving, or depositing any of certain fees including a fee in excess of \$1,200 for an annual fee under Section 167.011(c) for a program participant in the program. Makes nonsubstantive changes.

SECTION 3. Repealers, effective January 1, 2010: Sections 164.202 (Rehabilitation Order), 164.203 (Effect of Rehabilitation Order), 164.204 (Audit of Rehabilitation Order), and 164.205 (Responsibilities of Private Medical Associations), Occupations Code.

Repealers, effective January 1, 2010: Sections 204.305 (Rehabilitation Order), 204.306 (Effect of Rehabilitation Order), 204.307 (Audit of Rehabilitation Order), and 204.3075 (Responsibilities of Private Associations), Occupations Code.

SECTION 4. Provides that a rehabilitation order under Chapter 167 or 204, Occupations Code, entered into on or before January 1, 2010, is governed by the law as it existed immediately before that date and that law is continued in effect for that purpose.

SECTION 5. Effective date, except as otherwise provided by this Act: September 1, 2009.