

BILL ANALYSIS

Senate Research Center
82R30336 E

C.S.H.B. 680
By: Schwertner, Torres (Huffman)
Health & Human Services
5/20/2011
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

When a complaint against a licensed physician is received by the Texas Medical Board (TMB), TMB has a maximum of 30 days to inform the physician of the complaint and complete a preliminary investigation. However, there is a concern that this deadline does not properly account for the time it takes TMB to receive, process, and send notification of the complaint or allow adequate time for the physician to respond.

C.S.H.B. 680 amends current law relating to complaints filed with the Texas Medical Board.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Medical Board in SECTION 4 (Section 164.0015, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 154.051, Occupations Code, by adding Subsections (d) and (e), as follows:

(d) Prohibits the Texas Medical Board (TMB) from considering or acting on a complaint involving care provided more than seven years before the date on which the complaint is received by TMB unless the care was provided to a minor. Prohibits TMB, if the care was provided to a minor, from considering or acting on a complaint involving the care after the later of:

(1) the date the minor is 21 years of age; or

(2) the seventh anniversary of the date of care.

(e) Authorizes TMB, on receipt of a complaint, to consider a previously investigated complaint to determine whether there is a pattern of practice violating this subtitle.

SECTION 2. Amends Subchapter B, Chapter 154, Occupations Code, by adding Section 154.0535, as follows:

Sec. 154.0535. REQUIREMENTS FOR CERTAIN COMPLAINTS. (a) Defines, in this section, "anonymous complaint," "insurance agent," "insurer," and "third-party administrator."

(b) Prohibits TMB from accepting anonymous complaints.

(c) Requires that a complaint filed with TMB by an insurance agent, insurer, pharmaceutical company, or third-party administrator against a physician, notwithstanding any confidentiality requirements under Chapter 552 (Public Information), Government Code, this subtitle, or rules adopted under this subtitle, include the name and address of the insurance agent, insurer, pharmaceutical company, or third-party administrator filing the complaint. Requires TMB, not later than the 15th day after the date the complaint is filed with TMB, to notify the physician who is the subject of the complaint of the name and address of the insurance agent, insurer, pharmaceutical

company, or third-party administrator who filed the complaint, unless the notice would jeopardize an investigation.

SECTION 3. Amends Section 154.057(b), Occupations Code, to require TMB to complete a preliminary investigation of the complaint not later than the 45th day, rather than the 30th day, after the date of receiving the complaint.

SECTION 4. Amends Subchapter A, Chapter 164, Occupations Code, by adding Section 164.0015, as follows:

Sec. 164.0015. REMEDIAL PLAN. (a) Authorizes TMB, in addition to the authority under section 164.001 (Disciplinary Authority of Board; Methods of Discipline) and 164.002 (Board Disposition of Complaints, Contested Cases, and Other Matters), to issue and establish the terms of a remedial plan to resolve the investigation of a complaint relating to this subtitle.

(b) Prohibits a remedial plan from containing a provision that:

(1) revokes, suspends, limits, or restricts a person's license or other authorization to practice medicine; or

(2) assesses an administrative penalty against a person.

(c) Prohibits a remedial plan from being imposed to resolve a complaint:

(1) concerning a patient's death, the commission of a felony, or a matter in which the physician engaged in inappropriate sexual behavior or contact with a patient or became financially or personally involved with a patient in an inappropriate matter; or

(2) in which the appropriate resolution may involve restriction on the manner in which a license holder practices medicine.

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

(e) Authorizes TMB to assess a fee against a license holder participating in a remedial plan in an amount necessary to recover the costs of administering this plan.

(f) Requires TMB to adopt rules necessary to implement this section.

SECTION 5. Amends Sections 164.002(c) and (d), Occupations code, as follows:

(c) Provides that an agreed disposition or a remedial plan under Section 164.0015 is public information.

(d) Provides that, in civil litigation, an agreed disposition or remedial plan under Section 164.0015 is a settlement agreement under Rule 408, Texas Rules of Evidence.

SECTION 6. Amends Section 164.003, Occupations Code, by amending Subsections (b) and (f) and adding Subsection (i), as follows:

(b) Requires that rules adopted under this section require that certain conditions are met, including that TMB give notice to the license holder of the time and place of the meeting not later than the 45th day, rather than the 30th day, before the date the meeting is held.

(f) Requires the license holder to provide to TMB the license holder's rebuttal at least 15 business days, rather than five business days, before the date of the meeting in order for the information to be considered at the meeting.

(i) Requires TMB, on request by a physician under review, to make a recording of the informal settlement conference proceeding. Provides that the recording is a part of the investigative file and is prohibited from being released to a third party unless authorized under this subtitle. Authorizes TMB to charge the physician a fee to cover the cost of recording the proceeding.

SECTION 7. Amends Sections 164.007(a) and (a-1), Occupations Code, as follows:

(a) Requires TMB, after receiving the administrative law judge's findings of fact and conclusions of law, to dispose of the contested case by issuing a final order based on the administrative law judge's findings of fact and conclusions of law, rather than requires TMB to determine the charges on the merits after receiving the administrative law judge's findings of fact and conclusions of law.

(a-1) Prohibits TMB, notwithstanding Section 2001.058(e), Government Code, from changing a finding of fact or conclusion of law or vacating or modifying an order of the administrative law judge, rather than authorizes TMB to change a finding of fact or conclusion of law or vacate or modify an order of the administrative law judge only if TMB makes a determination required by Section 2001.058(e) (relating to authorizing a state agency to change a finding of fact or conclusion of law made by the administrative law judge, or to vacate or modify an order issued by the administrative judge, only under certain conditions), Government Code. Authorizes TMB to obtain judicial review of any finding of fact or conclusion of law issued by the administrative law judge as provided by Section 2001.058(f)(5) (relating to the occupational licensing agency and any other party to the contested case being entitled to obtain judicial review of the final decision in accordance with this chapter). Provides that, for each case, TMB has the sole authority and discretion to determine the appropriate action or sanction, and prohibits the administrative law judge from making any recommendation regarding the appropriate action or sanction.

SECTION 8. (a) Makes application of Sections 154.051, 154.057, and 164.003, Occupations Code, as amended by this Act, and Section 154.0535, Occupations Code, as added by this Act, prospective.

(b) Requires TMB to adopt rules under Section 164.0015, Occupations Code, as added by this Act, not later than January 1, 2012.

(c) Makes application of Section 164.0015, Occupations Code, as added by this Act, prospective.

(d) Makes application of Sections 164.007(a) and (a-1), as amended by this Act, prospective.

SECTION 9. Effective date: September 1, 2011.