

BILL ANALYSIS

C.S.H.B. 3804
By: Hughes
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties explain that state law regulating certain nonprofit health care organizations certified by the Texas Medical Board is supposed to provide protections for a physician's independent exercise of professional judgment and a physician's advocacy for patient care, but, according to the parties, many Texas physicians have become increasingly alarmed and vocal about hospitals that are attempting to direct how patient care is provided. The parties point out that, despite the protections in place, physicians sometimes are subject to unreasonable directives and punishment by hospital administrative leadership either through the peer review process or other hospital mechanisms.

The interested parties note that state law requires the chief medical officer of the health care organization to report immediately to the board any instance in which the chief medical officer reasonably believes a physician's independent medical judgment was compromised or a physician was punished for reasonably advocating patient care. The parties contend that in practice some chief medical officers have failed to report such matters to the board and that, as a result, physicians have been punished for reasonably advocating medical care for their patients. Unfortunately, the physician's professional and economic livelihood may have already been compromised through the chief medical officer's failure to report a matter, leaving the physician with no recourse to remedy the situation. C.S.H.B. 3804 seeks to address this issue.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3804 amends the Occupations Code to make the specification that a physician employed by a certain type of health organization certified by the Texas Medical Board retains independent medical judgment in providing care to patients and the prohibition against the health organization disciplining the physician for reasonably advocating for patient care applicable also to a physician who is otherwise affiliated with such a health organization. The bill subjects a health organization that violates that prohibition or the prohibition against interfering with, controlling, or otherwise directing a physician's professional judgment to specified penalties prescribed for a health organization determined to be established, organized, or operated in violation of or with the intent to violate the Medical Practice Act, including the revocation of certification. The bill requires a physician or chief medical officer who provides professional medical services for a health organization that violates either the prohibition against interfering with, controlling, or otherwise directing a physician's professional judgment or the prohibition

against disciplining a physician for reasonably advocating for patient care to report the violation to the board and the attorney general for investigation. The bill requires any person who is employed by or otherwise affiliated with a violating health organization and who is familiar with a chief medical officer's failure to report the violation as required to report to the board and the attorney general the failure of the chief medical officer to report the violation. The bill makes a chief medical officer, as a physician licensed by the board, accountable to the board for the chief medical officer's failure to make such a report.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3804 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 162.0021, Occupations Code, is amended to read as follows:

Sec. 162.0021. INTERFERENCE WITH PHYSICIAN'S PROFESSIONAL JUDGMENT PROHIBITED. (a) A health organization certified under Section 162.001(b) may not interfere with, control, or otherwise direct a physician's professional judgment in violation of this subchapter or any other provision of law, including board rules.

(b) A health organization that violates Subsection (a) is subject to the penalties prescribed by Section 162.003, including the revocation of a certification issued under Section 162.001 to that organization.

(c) A physician or chief medical officer who provides professional medical services for a health organization that violates Subsection (a) shall report the violation to the board and the attorney general for investigation.

(d) Any person who is employed by a health organization that violates Subsection (a) and is familiar with a chief medical officer's failure to report the violation as required by Subsection (c) shall report to the board and the attorney general the failure of the chief medical officer to report the violation.

(e) A chief medical officer, as a physician licensed by the board, is accountable to the board for the chief medical officer's failure to report.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 162.0021, Occupations Code, is amended to read as follows:

Sec. 162.0021. INTERFERENCE WITH PHYSICIAN'S PROFESSIONAL JUDGMENT PROHIBITED. (a) A health organization certified under Section 162.001(b) may not interfere with, control, or otherwise direct a physician's professional judgment in violation of this subchapter or any other provision of law, including board rules.

(b) A health organization that violates Subsection (a) is subject to the penalties prescribed by Section 162.003, including the revocation of a certification issued under Section 162.001 to that organization.

(c) A physician or chief medical officer who provides professional medical services for a health organization that violates Subsection (a) shall report the violation to the board and the attorney general for investigation.

(d) Any person who is employed by **or otherwise affiliated with** a health organization that violates Subsection (a) and is familiar with a chief medical officer's failure to report the violation as required by Subsection (c) shall report to the board and the attorney general the failure of the chief medical officer to report the violation.

(e) A chief medical officer, as a physician licensed by the board, is accountable to the board for the chief medical officer's failure to report.

SECTION 2. Section 162.0023, Occupations Code, is amended to read as follows:

Sec. 162.0023. DISCIPLINARY ACTION RESTRICTION. (a) A physician employed by a health organization certified under Section 162.001(b) retains independent medical judgment in providing care to patients, and the health organization may not discipline the physician for reasonably advocating for patient care.

(b) A health organization that violates Subsection (a) is subject to the penalties prescribed by Section 162.003, including the revocation of a certification issued under Section 162.001 to that organization.

(c) A physician or chief medical officer who provides professional medical services for a health organization that violates Subsection (a) shall report the violation to the board and the attorney general for investigation.

(d) Any person who is employed by a health organization that violates Subsection (a) and is familiar with a chief medical officer's failure to report the violation as required by Subsection (c) shall report to the board and the attorney general the failure of the chief medical officer to report the violation.

(e) A chief medical officer, as a physician licensed by the board, is accountable to the board for the chief medical officer's failure to report.

SECTION 3. The changes in law made by this Act to Sections 162.0021 and 162.0023, Occupations Code, apply only to a violation by a health organization that occurs on or after the effective date of this Act. A violation that occurs before the effective date of this Act is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2015.

SECTION 2. Section 162.0023, Occupations Code, is amended to read as follows:

Sec. 162.0023. DISCIPLINARY ACTION RESTRICTION. (a) A physician employed by or otherwise affiliated with a health organization certified under Section 162.001(b) retains independent medical judgment in providing care to patients, and the health organization may not discipline the physician for reasonably advocating for patient care.

(b) A health organization that violates Subsection (a) is subject to the penalties prescribed by Section 162.003, including the revocation of a certification issued under Section 162.001 to that organization.

(c) A physician or chief medical officer who provides professional medical services for a health organization that violates Subsection (a) shall report the violation to the board and the attorney general for investigation.

(d) Any person who is employed by or otherwise affiliated with a health organization that violates Subsection (a) and is familiar with a chief medical officer's failure to report the violation as required by Subsection (c) shall report to the board and the attorney general the failure of the chief medical officer to report the violation.

(e) A chief medical officer, as a physician licensed by the board, is accountable to the board for the chief medical officer's failure to report.

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.