

BILL ANALYSIS

Senate Research Center
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S.B. 1079
By: Duncan
Health & Human Services
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, 29 states license the services of Radiologist Assistants to provide support and contribute to the delivery of healthcare imaging services. Radiologist Assistants are often trained in Texas but must relocate to other states to practice because of the lack of a licensing process in this state.

S.B. 1079 creates a licensure and regulation process for an advanced-level medical radiologist technologist who is certified as an Radiologist Assistant and establishes requirements to maintain that license.

A Radiologist Assistant will be licensed by the Texas Medical Board to practice radiology assistance under the supervision of a physician licensed to practice radiology in Texas. The Texas Medical Board will promulgate rules defining the appropriate scope of practice for a Radiologist Assistant and the educational qualifications necessary to practice. The regulations outlined in the bill are consistent with national guidelines.

As proposed, S.B. 1079 amends current law relating to the regulation of medical radiologic technology, provides penalties, and imposes fees.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Board of Health is transferred to the executive commissioner of the Health and Human Services Commission and is modified in SECTION 2 (Section 601.056, Occupations Code) of this bill.

Rulemaking authority is expressly granted to the Texas Medical Board (TMB) in SECTION 3 (Sections 207.103, 207.156, 207.201, and 207.301, Occupations Code) and SECTION 4 of this bill.

Rulemaking authority expressly granted to TMB is restricted in SECTION 3 (Section 207.257, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 601.002, Occupations Code, by amending Subdivision (3) to redefine "department," and adding Subdivisions (5-a), (10-a), and (11-a) to define "executive commissioner," "radiologist," and "registered radiologist assistant."

SECTION 2. Amends Sections 601.056(a) and (b), Occupations Code, as follows:

- (a) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) (HHSC), rather than the Texas Board of Health (board), with the assistance of other appropriate state agencies to identify by rule radiologic procedures, other than radiologic procedures described by Subsection (c) (relating to providing that Subsection (a) does not apply to a certain radiologic procedure), that are dangerous or hazardous and that are authorized to be performed only by a practitioner, a medical radiologic technologist certified under this chapter, or a registered radiologist assistant. Makes nonsubstantive changes.

(b) Authorizes the executive commissioner, rather than the board, in adopting rules under Subsection (a), to consider whether the radiologic procedure will be performed by a registered nurse, a licensed physician assistant, or a registered radiologist assistant. Makes nonsubstantive changes.

SECTION 3. Amends Subtitle C, Title 3, Occupations Code, by adding Chapter 207, as follows:

CHAPTER 207. REGISTERED RADIOLOGIST ASSISTANTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 207.001. DEFINITIONS. Defines "board," "direct supervision," "immediately available," "radiologist," and "registered radiologist assistant" in this chapter.

SUBCHAPTER B. POWERS AND DUTIES OF BOARD

Sec. 207.051. GENERAL POWERS AND DUTIES. Requires the Texas Medical Board (TMB) to establish qualifications for a registered radiologist assistant to practice in this state; establish requirements for an examination for registration to practice as a registered radiologist assistant; establish minimum education and training requirements necessary for registration to practice as a registered radiologist assistant; prescribe the application form for registration to practice as a registered radiologist assistant; and develop an approved program of mandatory continuing education and the manner in which attendance at all approved courses, clinics, forums, lectures, programs, or seminars is monitored and recorded.

Sec. 207.052. GIFTS, GRANTS, AND DONATIONS. Authorizes TMB, in addition to any fees paid to TMB or money appropriated to TMB, to receive and accept under this chapter a gift, grant, donation, or other item of value from any source, including the United States or a private source.

SUBCHAPTER C. PUBLIC INTEREST INFORMATION; COMPLAINT AND INVESTIGATIVE INFORMATION

Sec. 207.101. PUBLIC PARTICIPATION. (a) Requires TMB to develop and implement policies that provide the public with a reasonable opportunity to appear before TMB and speak on any issue relating to registered radiologist assistants.

(b) Requires the executive director of TMB (executive director) to prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to TMB's programs and services under this chapter.

Sec. 207.102. PUBLIC INTEREST INFORMATION. (a) Requires TMB to prepare information of public interest describing the functions of TMB and the procedures by which complaints are filed and resolved under this chapter.

(b) Requires TMB to make the information available to the public and appropriate state agencies.

Sec. 207.103. COMPLAINTS. (a) Requires TMB by rule to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of TMB for the purpose of directing complaints about registered radiologist assistants to TMB.

(b) Requires TMB to list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a registered radiologist assistant.

Sec. 207.104. RECORDS OF COMPLAINTS. (a) Requires TMB to maintain a file on each written complaint filed with TMB under this chapter. Requires that the file include the name of the person who filed the complaint; the date the complaint is received by TMB; the subject matter of the complaint; the name of each person contacted in relation to the complaint; a summary of the results of the review or investigation of the complaint; and an explanation of the reason the file was closed, if TMB closed the file without taking action other than to investigate the complaint.

(b) Requires TMB to provide to the person filing the complaint and to each person who is a subject of the complaint a copy of TMB's policies and procedures relating to complaint investigation and resolution. Requires a person who reports a complaint by phone to be given information on how to file a written complaint.

(c) Requires TMB, at least quarterly and until final disposition of the complaint, to notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Sec. 207.105. REGISTRATION HOLDER ACCESS TO COMPLAINT INFORMATION. (a) Requires TMB to provide a registration holder who is the subject of a formal complaint filed under this chapter with access to all information in its possession that TMB intends to offer into evidence in presenting its case in chief at the contested hearing on the complaint, subject to any other privilege or restriction established by rule, statute, or legal precedent. Requires TMB to provide the information not later than the 30th day after receipt of a written request from the registration holder or the registration holder's counsel, unless good cause is shown for delay.

(b) Provides that, notwithstanding Subsection (a), TMB is not required to provide TMB investigative reports, investigative memoranda, the identity of a nontestifying complainant, attorney-client communications, attorney work product, or other material covered by a privilege recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

(c) Provides that the provision of information does not constitute a waiver of privilege or confidentiality under this chapter or other law.

Sec. 207.106. HEALTH CARE ENTITY REQUEST FOR INFORMATION. Requires TMB, on the written request of a health care entity, to provide to the entity:

(1) information about a complaint filed against a registration holder that was resolved after investigation by a disciplinary order of TMB or an agreed settlement; and

(2) the basis of and current status of any complaint under active investigation that has been referred by the executive director or the director's designee for legal action.

Sec. 207.107. CONFIDENTIALITY OF INVESTIGATIVE INFORMATION. Provides that a complaint, adverse report, investigation file, or other report, the identity of and reports made by a physician or registered radiologist assistant performing or supervising compliance monitoring for TMB, or other investigative information in the possession of or received or gathered by TMB, a TMB employee, or an agent relating to a registration holder, a registration application, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to any person other than TMB or a TMB employee or agent involved in registration holder discipline.

Sec. 207.108. PERMITTED DISCLOSURE OF INVESTIGATIVE INFORMATION.

(a) Authorizes investigative information in the possession of TMB, a TMB employee, or an agent that relates to the discipline of a registration holder to be disclosed to:

(1) a licensing authority in another state or a territory or country in which the registration holder is licensed or registered or has applied for a license or registration; or

(2) a peer review committee reviewing an application for privileges or the qualifications of the registration holder with respect to retaining privileges.

(b) Requires TMB, if the investigative information in the possession of TMB or a TMB employee or agent indicates a crime may have been committed, to report the information to the proper law enforcement agency. Requires TMB to cooperate with and assist all law enforcement agencies conducting criminal investigations of a registration holder by providing information relevant to the investigation. Provides that confidential information disclosed by TMB to a law enforcement agency remains confidential and is prohibited from being disclosed by the law enforcement agency except as necessary to further the investigation.

Sec. 207.109. IMMUNITY AND REPORTING REQUIREMENTS. (a) Requires a medical peer review committee in this state, a quality assurance committee in this state, a registered radiologist assistant, a registered radiologist assistant student, or a physician practicing medicine in this state to report relevant information to TMB related to the acts of a registered radiologist assistant in this state if, in that person's opinion, a registered radiologist assistant poses a continuing threat to the public welfare through the person's practice as a registered radiologist assistant. Prohibits the duty to report under this section from being nullified through contract.

(b) Provides that a person who, without malice, furnishes records, information, or assistance to TMB under this section is immune from any civil liability arising from that action in a suit against the person brought by or on behalf of a registered radiologist assistant who is reported under this section.

(c) Provides that Sections 160.002 (Report of Medical Peer Review), 160.003 (Report by Certain Practitioners), 160.006 (Board Confidentiality), 160.007 (Confidentiality Relating to Medical Peer Review Committee), 160.009 (Compliance with Subpoena), 160.013 (Expungement of Report Made in Bad Faith), and 160.014 (Action by Health Care Entity Not Precluded) apply to medical peer review regarding a registered radiologist assistant.

SUBCHAPTER D. REGISTRATION REQUIREMENTS

Sec. 207.151. LICENSE REQUIRED. (a) Prohibits a person from practicing as a registered radiologist assistant unless the person is registered under this chapter.

(b) Prohibits a person, unless the person holds a registration under this chapter, from using, in connection with the person's name:

(1) the title "Registered Radiologist Assistant;" or

(2) any other designation that would imply that the person is a registered radiologist assistant.

Sec. 207.152. REGISTRATION APPLICATION. Requires an applicant for registration to:

(1) file a written application with TMB on a form prescribed by TMB; and

(2) pay the application fee set by TMB.

Sec. 207.153. REGISTRATION ELIGIBILITY. Requires a person, to be eligible for a registration, to:

(1) be a medical radiologic technologist certified under Chapter 601 (Medical Radiologic Technologists);

(2) have a baccalaureate degree, postbaccalaureate certificate, or graduate degree from an advanced academic program encompassing a nationally recognized radiologist assistant curriculum that incorporates a radiologist-directed clinical preceptorship;

(3) be certified as a registered radiologist assistant by the American Registry of Radiologic Technologists or be certified as a radiology practitioner assistant by the Certification Board for Radiology Practitioner Assistants; and

(4) be credentialed to provide radiology services under the supervision of a radiologist.

Sec. 207.154. FEES. (a) Requires TMB to set and collect fees in amounts that are reasonable and necessary to cover the costs of administering and enforcing this chapter without the use of any other funds generated by TMB.

(b) Requires that fees collected by TMB under this chapter be deposited by TMB in the state treasury to the credit of an account in the general revenue fund and are authorized to be spent to cover the costs of administering and enforcing this chapter. Requires the comptroller of public accounts of the State of Texas, at the end of each fiscal biennium, to transfer any surplus money remaining in the account to the general revenue fund.

(c) Provides that all money paid to TMB under this chapter is subject to Subchapter F (State Funds Reform Act), Chapter 404, Government Code.

Sec. 207.155. ISSUANCE AND RENEWAL OF REGISTRATION. Requires TMB to issue a registered radiologist assistant registration in this state to a person who meets the requirements of this chapter and the rules adopted under this chapter.

Sec. 207.156. REGISTRATION RENEWAL. (a) Requires TMB by rule to provide for the annual renewal of a registered radiologist assistant registration.

(b) Authorizes TMB by rule to adopt a system under which registrations expire on various dates during the year. Requires that the registration fees, for the year in which the registration expiration date is changed, be prorated on a monthly basis so that each registration holder pays only that portion of the registration fee that is allocable to the number of months during which the registration is valid. Provides that, on renewal of the registration on the new expiration date, the total registration renewal fee is payable.

Sec. 207.157. NOTICE OF REGISTRATION RENEWAL. Requires TMB, at least 30 days before the expiration of a person's registration, to send written notice of the impending registration expiration to the person at the registration holder's last known address according to the records of TMB.

Sec. 207.158. PROCEDURE FOR RENEWAL. (a) Authorizes a person who is otherwise eligible to renew a registration to renew an unexpired registration by paying the required renewal fee to TMB before the expiration date of the registration. Prohibits a person whose registration has expired from engaging in activities that require a registration until the registration has been renewed under this section.

(b) Authorizes the person, if the person's registration has been expired for 90 days or less, to renew the registration by paying to TMB one and one-half times the required renewal fee.

(c) Authorizes the person, if the person's registration has been expired for longer than 90 days but less than one year, to renew the registration by paying to TMB two times the required renewal fee.

(d) Prohibits the person, if the person's registration has been expired for one year or longer, from renewing the registration. Authorizes the person to obtain a new registration by complying with the requirements and procedures for obtaining an original registration.

Sec. 207.159. REGISTRATION HOLDER INFORMATION. (a) Requires each registration holder to file with TMB:

- (1) the registration holder's mailing address;
- (2) the address of the registration holder's residence;
- (3) the mailing address of each of the registration holder's offices; and
- (4) the address for the location of each of the registration holder's offices if that address is different from the office's mailing address.

(b) Requires a registration holder to:

- (1) notify TMB of a change of the registration holder's residence or business address; and
- (2) provide TMB with the registration holder's new address not later than the 30th day after the date the address change occurs.

SUBCHAPTER E. SCOPE OF PRACTICE

Sec. 207.201. SCOPE OF PRACTICE. (a) Requires TMB to adopt rules to determine the scope of practice of a registered radiologist assistant. Requires TMB to consider guidelines adopted by the American College of Radiology, the American Society of Radiologic Technologists, and the American Registry of Radiologic Technologists in adopting rules under this subsection.

(b) Authorizes a radiologist to use the services of a registered radiologist assistant under the direct supervision of the radiologist.

(c) Authorizes the practice of a registered radiologist assistant to be performed in any place authorized by a delegating radiologist, including a clinic, hospital, health care center, or other institutional setting.

(d) Prohibits a registered radiologist assistant from interpreting images, making diagnoses, or prescribing medications or therapies.

Sec. 207.202. ESTABLISHMENT OF CERTAIN FUNCTIONS AND STANDARDS. Requires a registered radiologist assistant and the registered radiologist assistant's delegating radiologist to ensure that:

- (1) the registered radiologist assistant's scope of function is identified;
- (2) the delegation of medical tasks is appropriate to the registered radiologist assistant's level of competence;
- (3) the relationship between the registered radiologist assistant and the delegating radiologist and the access of the registered radiologist assistant to the delegating radiologist are defined; and

(4) a process is established for evaluating the registered radiologist assistant's performance.

SUBCHAPTER F. DISCIPLINARY PROCEEDINGS

Sec. 207.251. DISCIPLINARY ACTIONS BY THE BOARD. (a) Authorizes TMB, on a determination that an applicant or registration holder committed an act described by Section 207.252, 207.253, or 207.254, by order to take any of the following actions:

- (1) deny the person's registration application or revoke the person's registration;
- (2) require the person to submit to the care, counseling, or treatment of a health care practitioner designated by TMB;
- (3) stay enforcement of an order and place the person on probation;
- (4) require the person to complete additional training;
- (5) suspend, limit, or restrict the person's registration, including:
 - (A) limiting the practice of the person to, or excluding from the person's practice, one or more specified activities of radiologist assisting; or
 - (B) stipulating periodic TMB review;
- (6) assess an administrative penalty against the person as provided by Section 207.301;
- (7) order the person to perform public service; or
- (8) administer a public reprimand.

(b) Provides that, if TMB stays enforcement of an order and places a person on probation, TMB retains the right to vacate the probationary stay and enforce the original order for noncompliance with the terms of probation or impose any other remedial measure or sanction authorized by this section.

(c) Authorizes TMB to restore or reissue a registration or remove any disciplinary or corrective measure that TMB has imposed.

Sec. 207.252. CONDUCT RELATED TO FRAUD OR MISREPRESENTATION. Authorizes TMB to take action under Section 207.251 against an applicant or registration holder who:

- (1) fraudulently or deceptively obtains or attempts to obtain a registration;
- (2) fraudulently or deceptively uses a registration;
- (3) falsely represents that the person is a radiologist;
- (4) acts in an unprofessional or dishonorable manner that is likely to deceive, defraud, or injure the public;
- (5) fraudulently alters any registered radiologist assistant registration, certificate, or diploma;

(6) uses any registered radiologist assistant registration, certificate, or diploma that has been fraudulently purchased, issued, or counterfeited or that has been materially altered;

(7) directly or indirectly aids or abets the practice as a registered radiologist assistant by any person not registered by TMB to practice as a registered radiologist assistant; or

(8) unlawfully advertises in a false, misleading, or deceptive manner as defined by Section 101.201 (False, Misleading, or Deceptive Advertising).

Sec. 207.253. CONDUCT RELATED TO VIOLATION OF LAW. Authorizes TMB to take action under Section 207.251 against an applicant or registration holder who:

(1) violates this chapter or a rule adopted under this chapter;

(2) is convicted of a felony, placed on deferred adjudication, or placed in a pretrial diversion program; or

(3) violates state law if the violation is connected with practice as a registered radiologist assistant.

Sec. 207.254. CONDUCT INDICATING LACK OF FITNESS. (a) Authorizes TMB to take action under Section 207.251 against an applicant or registration holder who:

(1) habitually uses drugs or intoxicating liquors to the extent that, in TMB's opinion, the person cannot safely perform as a registered radiologist assistant;

(2) has been adjudicated as mentally incompetent;

(3) has a mental or physical condition that renders the person unable to safely perform as a registered radiologist assistant;

(4) has committed an act of moral turpitude;

(5) has failed to practice as a registered radiologist assistant in an acceptable manner consistent with public health and welfare;

(6) has had the person's registration or other authorization to practice as a registered radiologist assistant suspended, revoked, or restricted;

(7) has had other disciplinary action taken by another state or by the uniformed services of the United States regarding practice as a registered radiologist assistant;

(8) is removed or suspended or has disciplinary action taken by the person's peers in any professional association or society or is being disciplined by a licensed hospital or medical staff of a hospital, including removal, suspension, limitation of privileges, or other disciplinary action, if that action, in the opinion of TMB, was based on unprofessional conduct or professional incompetence that was likely to harm the public;

(9) has repeated or recurring meritorious health care liability claims that, in TMB's opinion, are evidence of professional incompetence likely to harm the public; or

(10) sexually abuses or exploits another person during the registration holder's practice as a registered radiologist assistant.

(b) Provides that, for the purpose of Subsection (a)(7), a certified copy of the record of the state or uniformed services of the United States taking the action constitutes conclusive evidence of that action.

(c) Provides that an action described by Subsection (a)(8) does not constitute state action on the part of the association, society, or hospital medical staff.

Sec. 207.255. SUBPOENA. (a) Authorizes the executive director, the director's designee, or the secretary-treasurer of TMB to issue a subpoena or subpoena duces tecum:

(1) to conduct an investigation or a contested case proceeding related to:

(A) alleged misconduct by a registered radiologist assistant;

(B) an alleged violation of this chapter or another law related to the practice of a registered radiologist assistant; or

(C) the provision of health care under this chapter;

(2) for purposes of determining whether to issue, suspend, restrict, or revoke a registration under this chapter; or

(3) for purposes of determining whether to issue or deny a registration under this chapter.

(b) Provides that failure to timely comply with a subpoena issued under this section is a ground for:

(1) disciplinary action by TMB or another licensing or regulatory agency with jurisdiction over the person subject to the subpoena; and

(2) denial of a registration application.

Sec. 207.256. PROTECTION OF PATIENT IDENTITY. Requires TMB, in a disciplinary investigation or proceeding conducted under this chapter, to protect the identity of each patient whose medical records are examined and used in a public proceeding unless the patient:

(1) testifies in the public proceeding; or

(2) submits a written release in regard to the patient's records or identity.

Sec. 207.257. RULES FOR DISCIPLINARY PROCEEDINGS. Prohibits the rules of practice adopted under this chapter by TMB under Section 2001.004 (Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions), Government Code, applicable to the proceedings for a disciplinary action from conflicting with rules adopted by the State Office of Administrative Hearings.

Sec. 207.258. REQUIRED SUSPENSION OF INCARCERATED REGISTERED RADIOLOGIST ASSISTANT. Requires TMB, regardless of the offense, to suspend the registration of a registered radiologist assistant serving a prison term in a state or federal penitentiary during the term of the incarceration.

Sec. 207.259. TEMPORARY SUSPENSION. (a) Requires the president of TMB, with TMB approval, to appoint a three-member disciplinary panel consisting of TMB members to determine whether a registered radiologist assistant's registration should be temporarily suspended.

(b) Requires the disciplinary panel, if the disciplinary panel determines from the evidence or information presented to the panel that a person registered to practice as a registered radiologist assistant would, by the person's continuation in practice, constitute a continuing threat to the public welfare, to temporarily suspend the registration of that person.

(c) Authorizes a registration to be suspended under this section without notice or hearing on the complaint if:

(1) institution of proceedings for a hearing before TMB is initiated simultaneously with the temporary suspension; and

(2) a hearing is held under Chapter 2001 (Administrative Procedure), Government Code, and this chapter as soon as possible.

(d) Authorizes the disciplinary panel, notwithstanding Chapter 551 (Open Meetings), Government Code, to hold a meeting by telephone conference call if immediate action is required and convening the disciplinary panel at one location is inconvenient for any member of the panel.

SUBCHAPTER G. ADMINISTRATIVE PENALTY

Sec. 207.301. ADMINISTRATIVE PENALTY. (a) Authorizes TMB by order to impose an administrative penalty against a person registered under this chapter who violates this chapter or a rule or order adopted under this chapter.

(b) Authorizes the penalty to be in an amount not to exceed \$5,000. Provides that each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) Requires TMB to base the amount of the penalty on:

(1) the severity of patient harm;

(2) the severity of economic harm to any person;

(3) the severity of any environmental harm;

(4) the increased potential for harm to the public;

(5) any attempted concealment of misconduct;

(6) any premeditated or intentional misconduct;

(7) the motive for the violation;

(8) any prior misconduct of a similar or related nature;

(9) the registration holder's disciplinary history;

(10) any prior written warnings or written admonishments from any government agency or official regarding statutes or rules relating to the misconduct;

(11) whether the violation is of a TMB order;

(12) the person's failure to implement remedial measures to correct or mitigate harm from the misconduct;

(13) the person's lack of rehabilitative potential or likelihood of future misconduct of a similar nature;

(14) any relevant circumstances increasing the seriousness of the misconduct; and

(15) any other matter that justice may require.

(d) Requires TMB by rule to prescribe the procedures by which it may impose an administrative penalty. A proceeding under this section is subject to Chapter 2001, Government Code.

(e) Requires TMB, if TMB by order determines that a violation has occurred and imposes an administrative penalty, to give notice to the person of the order. Requires that the notice include a statement of the person's right to judicial review of the order.

SECTION 4. Requires TMB, not later than January 1, 2014, to adopt the rules and procedures necessary to administer Chapter 207, Occupations Code, as added by this Act.

SECTION 5. Provides that, notwithstanding Chapter 207, Occupations Code, as added by this Act, a registered radiologist assistant is not required to hold a registration under that chapter to practice as a registered radiologist assistant in this state before September 1, 2014.

SECTION 6. Effective date: September 1, 2013.