

SUBJECT: Continuing the council and boards for physical and occupational therapy

COMMITTEE: Public Health — favorable, without amendment

VOTE: 10 ayes — Price, Sheffield, Arévalo, Burkett, Coleman, Cortez, Guerra, Klick, Oliverson, Zedler

0 nays

1 absent — Collier

SENATE VOTE: On final passage, April 18 — 30-1 (Hall)

WITNESSES: For — Mary Hennigan, Texas Occupational Therapy Association; Donald Haydon and Mark Milligan, Texas Physical Therapy Association

Against — None

On — John Maline and Stephanie Johnston, Executive Council of Physical Therapy and Occupational Therapy Examiners; (*Registered, but did not testify*: Erick Fajardo, Sunset Advisory Commission)

BACKGROUND: The Executive Council of Physical Therapy and Occupational Therapy Examiners is responsible for regulating physical therapy and occupational therapy. In 1993, the Legislature brought the Texas Board of Physical Therapy and the Texas Board of Occupational Therapy Examiners under the administration and oversight of the executive council.

Functions. The executive council issues and renews physical and occupational therapy licenses, registers physical and occupational therapy facilities, enforces the physical and occupational therapy statutes and rules and investigates possible violations, establishes fees, and approves proposals for rule changes from the boards.

Governing structure. Each board consists of nine members appointed by the governor. The executive council includes a governor-appointed

presiding officer, who is a member of the public, and a public member and licensee member from each of the boards.

Funding. In fiscal 2015, the agency received an appropriation of nearly \$1.3 million, 95 percent of which came from licensing and facility registration fees. Slightly more than half of expenditures go toward licensing, with enforcement costs and payments to Texas.gov making up the bulk of the remaining expenses.

Staffing. The executive council provides administrative support to the boards and employs 20 staff: an executive director, coordinators for each board, three accounting staff, a business manager, three investigators, and ten licensing employees.

Expiration. If not continued by the Legislature, the executive council and the boards would expire in statute on September 1, 2017.

DIGEST:

SB 317 would continue the Texas Board of Physical Therapy Examiners, the Texas Board of Occupational Therapy Examiners and the Executive Council of Physical and Occupational Therapy Examiners until September 1, 2029. The bill also would remove the requirement for occupational and physical therapy facilities to register with a board, adopt the interstate Physical Therapy Licensure Compact, allow licensing by endorsement, and require fingerprint-based background checks for license holders, among other provisions.

Registering facilities. The bill would repeal the requirement for physical therapy and occupational therapy facilities to register with their respective boards. It would direct the physical therapy and occupational therapy boards to establish a process to expunge any record of disciplinary action taken against a license holder before September 1, 2019, for practicing in a facility that failed to meet board registration requirements, as the law existed on January 1, 2019.

Physical Therapy Licensure Compact. The bill would adopt the Physical Therapy Licensure Compact, under which Texas and

participating states would recognize each other's physical therapy licenses, subject to certain limited requirements.

The bill would specify reciprocity and oversight requirements, the process for dispute resolution, enforcement, data reporting, financing, adverse actions, and termination of the compact, among other provisions. The compact would take effect on the date the tenth member state enacted the compact.

License by endorsement. The physical therapy and occupational therapy boards would be required to license certain practitioners from other jurisdictions through license by endorsement. The bill would allow a physical therapist, physical therapist assistant, occupational therapist, or occupational therapist assistant with a current, unrestricted license from a jurisdiction with licensing requirements substantially equivalent to Texas to be licensed without having to retake the licensing examination.

Licensing examination. The bill would require the physical therapy and occupational therapy boards to recognize, by rule, a national testing entity to administer the examination to obtain a license as a physical therapist, occupational therapist, physical therapist assistant, or occupational therapist assistant.

Either board could require applicants to pass a jurisprudence examination and meet other board requirements to receive a license.

Fingerprint-based background checks. The physical therapy and occupational therapy boards would be required to conduct fingerprint-based criminal background checks before issuing or renewing licenses. A license holder would not be required to submit fingerprints to renew a license if he or she had previously submitted fingerprints when the license initially was issued or as part of a previous license renewal. The bill would allow the boards to administratively suspend or refuse to renew the license of a person who did not provide fingerprints. Either board could enter into an agreement with the Department of Public Safety to administer the criminal history record check and authorize the department to charge applicants a fee for this purpose.

Sanctions schedule. The physical therapy and occupational therapy boards would be required, by rule, to adopt a schedule of administrative penalties and other sanctions the boards could use. In adopting the schedule, the bill would require the boards to ensure that the amount of the penalty or severity of the sanction was appropriate for the type of violation or conduct that was the basis for disciplinary action.

Foreign-trained applicants. The bill would remove the requirement for a foreign-trained physical therapy license applicant to be of good moral character. A foreign-trained applicant for an occupational therapy license would be required to complete academic and supervised field work requirements substantially equivalent to those required of other applicants.

Executive council and board member requirements. SB 317 would require the executive council, the physical therapy board, and the occupational therapy board to develop and implement policies that clearly separated the policymaking responsibilities of the council and boards, respectively, from the management responsibilities of the director and the staff of the council and each board.

The bill would remove the executive council's responsibility for administering written examinations and collecting fees as it related to licenses.

A member of the executive council or either board would be required to complete a training program covering certain information related to their practices and obligations, as specified in the bill.

The bill would add conflict of interest provisions prohibiting board and council members or their spouses from working for Texas trade associations for physical or occupational therapy.

Effective date. The bill would take effect September 1, 2017, except as otherwise provided in the bill.

SUPPORTERS
SAY:

SB 317 would continue the executive council and boards for another 12 years, ensuring the state's ability to regulate professions that play an

important role in patients' well-being. Physical and occupational therapists have direct physical contact with patients, many of whom are from vulnerable populations, including the disabled, children, and the elderly. Texas has an interest in regulating physical and occupational therapy to prevent potential harm to patients.

Registering facilities. The bill appropriately would remove the requirement that physical therapy and occupational therapy facilities register with their respective boards, eliminating an unnecessary and costly burden to facility owners. Punishments for not registering can be severe, and virtually all disciplinary action is taken against individual licensees, not facility owners, even if the licensee had no responsibility in the management of the facility.

Registering facilities does not improve public health or safety. Removing the registration requirement would not affect the quality of physical or occupational therapy facilities because safety inspections are not part of the registration process. While registration has served as an instrument for data collection, similar information and other data related to licensee's work settings could be gathered through the licensee renewal process.

Removing the registration requirement for facilities also would reduce bureaucracy. Texas should not continue to require an unnecessary registration solely to generate revenue. The change to the registration requirement would take effect at the beginning of fiscal 2020 and would not affect the fiscal 2018-19 budget.

Physical Therapy Licensure Compact. By adopting the compact, SB 317 would streamline the process for Texas practitioners who met certain qualifications to work in other states, and vice versa. There are not enough physical and occupational therapists to meet current and future needs in Texas, and the bill would provide a path for qualified practitioners to acquire a Texas license, increasing the state's supply of practitioners while also ensuring safety.

License by endorsement. Through license by endorsement, the bill

would allow practitioners in other jurisdictions with substantially the same requirements as those in Texas to be recognized as licensed practitioners in this state. Providing clear authority to issue licenses by endorsement would help ensure an expedited path for qualified licensees elsewhere.

Fingerprint-based background checks. Requiring background checks under the bill would increase patient safety. Physical and occupational therapists often practice outside regulated locations, including clients' homes, and can treat patients who are elderly or members of vulnerable populations. Because of this, there is a heightened need to ensure physical and occupational therapists do not have a criminal history that would place a client's health or safety at risk. Fingerprint-based background checks are the most effective type of background check and provide the most appropriate level of information to the board.

OPPONENTS
SAY:

Registering facilities. Removing the requirement for physical or occupational therapy facilities to register would take away the board's ability to assure the quality of physical therapy facilities. The facility registration process was created in order to keep track of facilities that were hiring unlicensed physical therapists, and removing the registration requirement could affect patient safety.

In addition, the loss of facility registration fees would cost the state more than \$1 million in general revenue each year. This revenue could be sorely needed in future biennia when the fiscal climate may not be any better than the budget constraints Texas faces today.

Fingerprint-based background checks. The use of fingerprint-based background checks is not the only valid method to screen candidates for licenses. By restricting the method for background checks to fingerprints, the bill could stifle progress toward the boards' adopting newer methods and technology for this purpose.

NOTES:

According to the Legislative Budget Board's fiscal note, the bill would have an annual cost to general revenue of approximately \$1.1 million beginning in fiscal 2020 due to the loss of facility registration fees.