

HEALTH CARE REGULATIONS

THE ISSUE

Corporate Practice of Medicine

As the cost of health care in Texas rises, the prohibition on the corporate practice of medicine has become a hotly contested topic. Questions have been raised about whether physician employment compromises a physicians' ability to make medical decisions that are in the best interest of their patients. Hospital districts and some health care facilities argue that employing physicians provides underserved areas—and facilities competing for physicians—a leveraging tool to attract and retain physicians.

However, court cases as recent as 2004 and concurring opinions issued by the Attorney General have concluded that it is a violation of doctrine for a corporation of laypersons to employ licensed physicians and receive fees for the services rendered by the physician. Exceptions are provided to select health organizations that meet requirements outlined in the Texas occupations code.

Allowing corporations to employ physicians not only creates a competitive market for physicians, but physician employment also reduces physician liability by transferring a significant portion of responsibility to the entity employing the physician—thereby reducing liability insurance costs for physicians allowing them to pass the savings on to their patients through lower prices.

Additionally, forbidding corporations from employing physicians makes it difficult to utilize less expensive and more convenient health care facilities. Although corporations can staff facilities with providers who work as independent contractors, retail corporations in Texas cannot open a health service center inside their building and hire physicians to staff the clinic as their employee.

Scope of Practice

Scope of practice regulations limit the availability of health care providers by restricting the services health care professionals are allowed to provide. For example, Texas operates one of the most highly regulated environments for nurse practitioners in the country, greatly restricting the ability of these qualified medical professionals to operate effectively and provide health care services to Texas consumers.

Texas statute requires that a nurse practitioner collaborate with a licensed physician in order to operate in a separate facility. Additional Texas statute requires a physician to work onsite with the nurse practitioner 20 percent of the time and requires that the physician's primary site be no more than 60 miles from the facility where the nurse practitioner works. Further regulation limits the number of nurse practitioners that a physician can

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collaborate with to three—a regulation that impedes the number of nurse practitioners allowed to offer services in the state.

Bills filed last session by Rep. Rob Orr and Sen. Dan Patrick would have increased the number of Advanced Practice Nurses (APNs) or Physician Assistants (PAs) a physician could collaborate with and would have eliminated the requirement that physicians be on the premise at least 20 percent of the time. However, both bills failed to pass and as a result the development of retail clinics that utilize these health care providers has lagged the rest of the country.

THE FACTS

- ★ Texas has 226 regions designated as Medically Underserved Areas (MUAs) or as Medically Underserved Populations (MUPs) and nearly 90 percent of rural Texas counties are partially or completely designated as medically underserved.
- ★ Twenty-five counties in the state have no physician at all, and nearly 20 percent of Texans—or 3.2 million people—do not have access to a primary care provider.
- ★ The number of retail clinics is expanding in the 33 states where regulations are more favorable to the development of retail health clinics.
- ★ Texas has one of the most highly regulated environments for nurse practitioners, which makes it difficult to provide alternative, more affordable health care services.

RECOMMENDATIONS

- ★ Repeal state statutes that prohibit the employment of physicians by corporations other than hospitals.
- ★ Repeal regulations that dictate the collaborative relationship between physicians and nurse practitioners; look at the state of Arizona's guidelines for nurse practitioners.

RESOURCES

- *Comparing State Regulation of Nurse Practitioners* by Mary Katherine Stout and Jonathan Elton, Texas Public Policy Foundation (2007) <http://www.texaspolicy.com/pdf/2007-11-PB34-nursepractitioner-mks.pdf>.
- *Corporate Practice of Medicine Doctrine* by Mary H. Michal, Meg Pekarske, Mathew K. McManus, and Reinhart Boerner Van Deuren (2006) <http://www.nhpco.org/files/public/palliativecare/corporate-practice-of-medicine-50-state-summary.pdf>.
- “State Law Hinders Health-Care Clinics” by David Hendricks, *San Antonio Express-News* (6 Feb. 2008) <http://www.mysanantonio.com/news/metro/stories/MYSA020708.01E.hendricks.2eb2466.html>.
- *Fellowship in Rural Family Medicine and Obstetrics*, University of Texas Medical Branch, <http://fammed.utmb.edu/fmr/ruralmed.asp>.

