



Physicians Caring for Texans

September 7, 2010

The Honorable Royce West
Chair, Intergovernmental Relations Committee
Texas Senate
P.O. Box 12068
Austin, TX 78711-2068

Dear Senator West:

On behalf of the nearly 45,000 physician, resident, and medical student members of the Texas Medical Association, we appreciate the opportunity to honestly examine mechanisms to help rural communities attract and retain the physicians necessary to allow Texans who live in our state's smaller towns to have access to needed physician services. It is a challenging and multifaceted issue. It is not addressed simply by allowing the direct employment of physicians with significant oversight by the Texas Medical Board.

TMA's long standing policy in opposition to the corporate practice of medicine remains unchanged. At the heart of this policy continues to be protecting the patient-physician relationship.

TMA has concerns about several common practices that appear to serve the employer's needs over the patient's or community's needs. For example

- Requiring a certain percentage of admissions from the emergency department. Such actions needlessly expose some patients to unnecessary hospitalization and additional costs.
- Prohibiting referrals outside the group. Such policies absolutely work against good patient care, subject patients to delays in definite treatment, or provide less than optimal care.
- Requiring physicians to enter into contracts that they effectively cannot cancel. Physicians are disadvantaged with contracts that either do not address cancellation or impose unreasonable requirements, as they perceive that hospitals have the upper hand in the market because of their size and resources.
- Many contracts have unreasonable non-compete clauses. Several examples that have been brought to our attention contain non-compete clauses that would require a physician to relocate more than 150 miles. That would effectively eliminate his or her services from the very patients in the community who need access to care.

In addition, we continue to have concerns about the potential for direct employment structures to be divisive with respect to a community's current medical community.

This could set up dynamics that favor the employed physician at the expense of the independent contractor physicians, use access to a hospital's facility or services as a potential wedge against one or more physicians, recruit certain specialties that may be more beneficial to hospital admissions than to community needs, and place the burden for charity care unfairly on the independent and non-employed physicians.

We recognize that under several unique, focused, and carefully controlled exceptions, physicians may be employed in Texas. And the public hospital exceptions, which TMA has supported, have been intended to help the very poor and disadvantaged as part of our commitment to caring for all Texans. At the same time, we understand the financial challenges of maintaining a physician practice in a rural community particularly in light of a payor mix dominated by Medicaid and Medicare and the inadequate payments from these programs.

There has been significant discussion about the formation and operation of 5.01a corporations. It is important to note that hospitals are the chief organizing members of almost all 5.01a corporations in Texas. For reference, attached is a list of nearly 300 currently operating 5.01a corporations in Texas. This list was made available to us by the Texas Medical Board, where such entities are required to be certified. Of note, there are several rural and smaller community based organizations (e.g. Big Spring, Comanche, Dumas, Euless, Graham, Longview, Pecos, Seguin, and Uvalde).

The committee also has an opportunity to examine current exceptions like the 5.01a corporation to ensure that existing entities do not inappropriately influence care decisions that rightfully belong with the patient and physician.

We strongly believe that the Texas Medical Board has the ultimate authority in regulating the practice of medicine in Texas on behalf of all our citizens. We should look to the board not only to maintain high standards of ethical practice but also to establish mechanisms and processes that protect physicians' responsibility to make clinical decisions with and for their patients.

The Texas Medical Association has outlined in legislative language one approach to establish such structure, processes, and protections. We look forward to further discussions under your leadership to achieve a bill that truly helps small communities, focuses on patient needs, and protects physicians' prudent exercise of clinical judgment.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan McCoy". The signature is fluid and cursive, with a large initial "D" and "M".

Dan McCoy MD, Chair
TMA Council on Legislation

Attachment: 162.001(b) Non-Profit Health Organizations (current only)