

SUBJECT: Authorizing merger agreements among certain hospitals

COMMITTEE: Public Health — favorable, without amendment

VOTE: 8 ayes — S. Thompson, Wray, Frank, Lucio, Ortega, Price, Sheffield, Zedler

0 nays

3 absent — Allison, Coleman, Guerra

WITNESSES: For — Brad Holland, Hendrick Health System; Shane Plymell, Shannon Medical Center and Shannon Clinic; (*Registered, but did not testify:* Linda Townsend, CHRISTUS Health; Denise Rose, Community Health Systems; Norm Archibald and Jeremy Walker, Hendrick Medical Center; John Hawkins, Texas Hospital Association; John Henderson and Don McBeath, Texas Organization of Rural and Community Hospitals)

Against — None

On — (*Registered, but did not testify:* Tori Grady, Kristi Jordan, Rachel Turner, Health and Human Services Commission)

BACKGROUND: Some observers have noted that Texas leads the nation in rural hospital closures and have suggested that rural hospitals would benefit from having additional resources, such as merger agreements, to deal with challenges and improve health care services.

DIGEST: HB 3301 would allow two or more hospitals, defined as nonpublic general or special hospitals and private mental hospitals, to enter into merger agreements. The bill would apply to a merger agreement among hospitals located within a county that contained two or more hospitals and had a population of:

- less than 100,000 and was not adjacent to a county with at a population of 250,000 or more; or

- between 100,000 and 150,000 and was not adjacent to a county with a population of 100,000 or more.

Certificate of public advantage. The bill would establish that no merger agreement could receive immunity from state and federal antitrust laws unless the Health and Human Services Commission (HHSC) issued a certificate of public advantage governing the merger.

One or more parties to a merger could submit an application to HHSC for a certificate of public advantage and would have to provide certain documentation. HHSC could assess an application fee of no more than \$75,000.

The bill would require HHSC and the attorney general to review a certificate of public advantage application. HHSC would have to grant or deny the application by the 120th day after the date it was filed.

HHSC would have to issue the certificate if the commission determined that:

- the proposed merger would likely benefit the public by maintaining or improving the quality, efficiency, and accessibility of health care services; and
- the likely benefits would outweigh any disadvantages attributable to a reduction in competition that could result from the proposed merger.

To make the determination, HHSC would have to consider the merger's effect on certain nonexclusive factors, including:

- the quality and price of hospital and health care services;
- the preservation of sufficient hospitals within a geographic area to ensure public access to acute care;
- the cost efficiency of services, resources, and equipment provided or used by hospitals party to the merger;
- the ability of health care payors to negotiate payment and service

- arrangements with hospitals proposed to be merged; and
- the extent of any reduction in competition among physicians, allied health professionals, other health care providers, or other persons.

The bill would require HHSC to maintain records of all approved merger agreements.

A hospital resulting from a merger agreement could voluntarily terminate its certificate of public advantage by giving HHSC notice at least 30 days before the date of termination.

HHSC would be required annually to review an approved certificate. The attorney general also annually could review the certificate, and HHSC would not be permitted to complete its review until the attorney general has determined whether to conduct a review and, if so, had the opportunity to conduct the review.

Supervision. The bill would require HHSC to supervise each hospital operating under a certificate of public advantage to ensure that the hospital furthered the purposes of the bill.

Rate increases for hospital services would have to receive prior approval from HHSC. At least 90 days before the implementation of any proposed rate increases for inpatient or outpatient hospital services, a hospital would have to submit to HHSC any proposed rate increases for those services and any information concerning costs, patient volume, acuity, payor mix, and other requested information.

The bill would require hospitals to submit proposed reimbursement rate increases at least 60 days before the execution date.

HHSC would have to approve a proposed rate increase if:

- the rate likely would benefit the public by maintaining or improving the quality, efficiency, and accessibility of health care services and the ability of hospital administrators to operate health

- care facilities and take measures to improve public health; and
- the rate would not inappropriately exceed competitive rates for comparable services in the hospital's market area.

By the 30th day before the implementation of the proposed rate increase, HHSC would have to notify the hospital of the commission's decision to approve, deny, or modify the proposed rate increase.

HHSC would require a hospital operating under a certificate of public advantage to adopt a corrective action plan if the commission determined that a hospital activity did not benefit the public and no longer met certain standards.

HHSC could assess an annual supervision fee of no more than \$75,000 against each hospital operating under a certificate.

Investigation. The bill would allow the executive commissioner of HHSC to investigate the hospital's activities and to require the hospital to perform or refrain from certain actions if the commission determined the hospital was not compliant with the bill's provisions.

Judicial review and court proceedings. The bill would allow a person to appeal HHSC's final decision on a certificate of public advantage application by filing a petition for judicial review in a Travis County district court. The district court would have to conduct the review sitting without a jury and could reverse HHSC's decision regarding revocation of a certificate of public advantage under certain circumstances.

The bill would allow the attorney general to require the attendance and testimony of witnesses and the production of documents in Travis County or the applicant's county for the purpose of investigating whether the merger agreement satisfied the standards as listed in the bill.

Other provisions. The bill would require each hospital to submit an annual report to HHSC. The report would have to include information on:

- the benefits attributable to the issuance of the certificate;
- the hospital's actions in furtherance of any commitments made by the parties to the merger or to comply with the terms imposed by HHSC as a condition for merger approval;
- a description of hospital activities under the merger;
- the price, cost, and quality of and access to health care; and
- compliance with the issuance of the certificate.

The executive commissioner of HHSC would adopt rules to administer and implement the bill's provisions.

The bill would take effect September 1, 2019.