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Texas Rural Hospitals Given Authority to Directly Employ Physicians

By **Lisa S. Miller**

While Texas remains one of only five states that continues to enforce a prohibition on the corporate practice of medicine, on Thursday, May 12, 2011, Governor Rick Perry signed a bill into law that now permits critical access hospitals, sole community hospitals, and hospitals in counties with a population of 50,000 or less to directly employ physicians.

The prohibition of the corporate practice of medicine in Texas has been in place since the early 20th century and generally prohibits physicians from being employed by hospitals or other non-physician owned businesses. Throughout the years, however, certain exceptions have been carved out that permit the employment of physicians by certain entities. These exceptions include medical centers connected to state universities or state hospitals and non-profit health organizations certified by the Texas Medical Board. Additionally, the legislature has allowed approximately 12 individual hospital districts to change their enabling legislation to employ physicians. Effective immediately, these exceptions now also include critical access hospitals, sole community hospitals, and rural hospitals.

With the ban on the corporate practice of medicine in effect, some smaller Texas communities had reported having difficulty recruiting and retaining physicians to serve the communities. With the costs and administrative burdens associated with establishing a solo medical practice and the general trend away from the independent practitioner model, many physicians are opting not to locate in these rural communities. This new law is intended to bring more physicians into these rural communities.

The bill had the support and approval of the Texas Medical Association, the Texas Hospital Association and the Texas Organization of Rural and Community Hospitals. Helping to secure the support of the Texas Medical Association, the law puts into place certain protections to ensure that employed physicians maintain their independent medical judgment. These protections include (i) a requirement that a chief medical officer at a hospital have the recommendation of the medical staff before employing a physician, and (ii) ensuring that the physician's independent medical judgment remains uncompromised at both the employing hospital and at health care facilities operated by the employing hospital.

Additionally, the law includes language ensuring that hospitals can't discriminate between employed physicians and those physicians who are not employed but are practicing at the hospital. The law does permit an employed physician to enter into a covenant not to compete if such covenant is in compliance with all requirements applicable to physician covenants not to compete.

While this new law only permits a small number of entities to employ physicians, there is some speculation that, over time, this

may become the norm throughout the state. From the perspective of physicians, the passage of this new law has important implications in setting a standard for any future physician employment arrangements by ensuring that appropriate safeguards are in place protecting the physicians' independent medical judgment.

If you have any questions regarding this e-Alert, please contact **Jed Morrison** at 210.978.7780 or jmorrison@jw.com or **Lisa Miller** at 210.978.7781 or lsmiller@jw.com.

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