



Statement by the Texas Hospital Association and Texas Medical Association
Concern Regarding Potential Legislation to Mandate Hospital Privileges for Podiatrists

February 6, 2023

We are writing on behalf of the Texas Hospital Association and Texas Medical Association to provide our response to HB 1767, which would mandate hospital privileges for podiatrists. Our organizations carefully considered the proposal, and our organizations are in opposition.

The Current System Works and Protects Patients

The privileging process executed by a hospital's medical staff and governing body plays one of the most important roles in our nation's health care delivery system. A successful privileging process features an environment in which the independent medical staff can work in collaboration with the hospital's governing body to determine what types of surgeries are safe to be performed for patients at a particular hospital. The privileging process is effective because the hospital medical staff is provided the freedom to establish its requirements for clinical privileges based on the community, patient population, patient safety, need, practicality of providing privileges for certain procedures, and the capability and availability of resources at the particular hospital, as well as on the applicant's qualifications, licensure, education, training, and experience.

The Legislative Proposal Would Jeopardize a Medical Staff's Independent Judgment and the Authority of the Hospital's Governing Body

The legislative proposal raises two great concerns. First, it would impose a statutory mandate on the privileging process, which would create the risk of unnecessary litigation for the hospital. What this means is that the hospital may be deterred from denying privileges for otherwise legitimate patient safety or business reasons to avoid a legal accusation that it is instead denying privileges because the podiatrist is not a physician. There is no current issue with the privileging process for podiatrists that needs to be resolved. Hospitals throughout the state feature podiatrists performing surgeries that the hospital's medical staff determined are appropriate for that particular facility. Any minor benefit in codifying this proposal is significantly outweighed by the threat of litigation it creates and the potential impact on decisions affecting patient safety.

Second, we are concerned this proposal is an attempt to circumvent Texas law on scope of practice for a podiatrist. Texas law is clear that a podiatrist's scope of practice is limited to the foot, which does not include the ankle. A hospital should have the freedom to deny a category of privileges to a podiatrist where such privileges may result in a violation of Texas's scope of practice laws.

Surgery Is Serious, and a Hospital's Independent Medical Staff and Governing Body Play Critical Roles

Surgery is one of the most serious and complicated services that a patient may receive in a hospital. It is critical to ensure that a hospital's governing body is provided an independent atmosphere in which it can determine what is legally appropriate for the patient. What may be appropriate for one hospital may not be appropriate for another hospital, and it should be left up to the medical experts, the hospital's medical staff, to make patient safety decisions through an independent process.