

# PUBLICATION

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## Tennessee Changes Corporate Practice of Medicine to Permit Nursing Facilities to Employ Physicians

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The Tennessee General Assembly passed important new legislation (Pub. Ch. 649, SB 3263) permitting nursing facilities and their affiliates to employ medical doctors to work in their facilities. The legislation, which went into effect July 1, 2012, amends Tennessee Code Annotated Sections 68-11-205 and 63-6-204 by providing an exception to Tennessee's prohibition on the corporate practice of medicine, provided certain conditions are satisfied.

The legislation specifies that a nursing home or its affiliate, termed an "employing entity," is permitted to employ a physician so long as the employment relationship between the physician and nursing home allows the physician to exercise independent medical judgment in diagnosing, referring and treating patients. Such independent medical judgment must be evidenced by a written contract, job description or documentation, which contains no language limiting the physician's independent medical judgment. In addition, for a nursing home to employ a physician under this legislation, it must also satisfy the conditions listed below.

- Physician Training: The employed physician must have completed residency training in internal medicine, family medicine, primary care, geriatric medicine or gerontology, or a related medical specialty area, or have become board certified in one of those medical specialties.
- Maintain Physician's Independent Medical Judgment: A nursing home must not restrict or interfere with a physician's medically appropriate diagnostic or treatment decisions. If a dispute arises between the physician and nursing home regarding diagnostic or treatment decisions, the burden of proof rests on the nursing home.
- Nursing Home Affiliate Restrictions: A nursing home affiliate that employs physicians may not engage in any business other than the employment of physicians, the management of physicians and health care facilities, and the ownership of property and facilities used in the provision of health care services.
- Physician's Remedies: If a physician establishes a violation by the employing entity of the physician's "practice of medicine," as defined in Tennessee Code Annotated Section 63-6-204, the physician is entitled to recover the cost of litigation, arbitration or peer review defense and a reasonable attorney's fee.
- Physician Referral: The employing nursing home shall not restrict or interfere with patient referral decisions resulting in unnecessary increases in cost to the patient for the medical services provided.
- Written Contract Provisions: The written contract between the nursing home and physician, in addition to the other items required, must include the name and location of each site where the physician may see patients.
- Noncompete Provisions: The nursing home must not restrict the employed physician's right to practice medicine at the termination or conclusion of the employment relationship in a manner that contravenes the covenant not to compete statutes set forth in Tennessee Code Annotated Section 63-1-148.

The enactment of Senate Bill 3263 alters the landscape of the corporate practice of medicine in Tennessee. Tennessee's general rule prohibiting non-physician owned entities, including nursing homes, from directly

employing physicians has been modified in favor of a law allowing nursing homes and their affiliates to employ physicians in certain circumstances, as set forth above. This change in the law creates new opportunities for Tennessee's nursing homes to provide more medical resources for their residents. While this enactment is of great benefit to nursing homes and their affiliates in Tennessee, the requirements of the law must be closely adhered to.

To discuss this law or seek guidance concerning the corporate practice of medicine in Tennessee, please contact your Baker Donelson attorney.