

By: Guerra

H.B. No. 4867

A BILL TO BE ENTITLED

AN ACT

relating to health care transparency, including advertising, identification, and notice requirements for certain health facilities and health professionals; authorizing administrative and civil penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 2, Health and Safety Code, is amended by adding Subtitle J to read as follows:

SUBTITLE J. PROVISION OF HEALTH CARE SERVICES

CHAPTER 185. IDENTIFICATION AND NOTICE REQUIREMENTS FOR HEALTH

FACILITIES AND HEALTH PROFESSIONALS

Sec. 185.001. DEFINITIONS. In this chapter:

(1) "Advertisement" means:

(A) any printed, electronic, or oral statement, with respect to the provision of health care services by a health care professional:

(i) that is communicated or disseminated to the public;

(ii) that:

(a) is intended to encourage a person to use the professional's services; or

(b) for a commercial purpose, names the professional in connection with the practice, profession, or institution in which the professional provides health care

1 services; and

2 (iii) the preparation, communication, or
3 dissemination of which is controlled by the professional or a group
4 to which the professional is affiliated; and

5 (B) any communication or statement not described
6 by Paragraph (A) but that is used in the regular course of the
7 professional's business for the purpose of promoting the
8 professional's services to the public, including:

9 (i) business cards;

10 (ii) letterhead;

11 (iii) signs;

12 (iv) pamphlets;

13 (v) brochures;

14 (vi) e-mails and any other communication or
15 statement transmitted through the Internet; or

16 (vii) audio or video communications,
17 including television or radio advertisements.

18 (2) "Commission" means the Health and Human Services
19 Commission.

20 (3) "Health facility" means:

21 (A) a solo or group medical practice; or

22 (B) an urgent care facility.

23 (4) "Health professional" and "professional" mean an
24 individual licensed under Title 3, Occupations Code.

25 (5) "Urgent care facility" means a facility providing
26 health care that:

27 (A) provides episodic ambulatory health care to

1 individuals outside of a hospital emergency room setting;

2 (B) does not require an individual to make an
3 appointment;

4 (C) provides some services typically provided in
5 a primary care physician's office or emergency room; and

6 (D) treats individuals requiring treatment of an
7 illness or injury that requires immediate care but is not
8 life-threatening.

9 Sec. 185.002. PHOTO IDENTIFICATION BADGE REQUIRED. (a) A
10 health facility shall adopt a policy requiring a health
11 professional providing direct patient care at the facility to wear
12 a photo identification badge during all patient encounters, unless
13 wearing the badge is precluded by isolation or sterilization
14 protocols adopted by the facility. The badge must be of sufficient
15 size, be prominently worn and clearly visible, and include:

16 (1) the professional's first and last name;

17 (2) the facility department with which the
18 professional is associated;

19 (3) the type of license held by the professional under
20 Title 3, Occupations Code, and no other title; and

21 (4) if applicable, the professional's status as a
22 student, intern, or trainee, or resident, but only if the
23 professional is registered with the Texas Medical Board.

24 (b) For purposes of Subsection (a)(3), the identification
25 badge of a health professional licensed under Title 3, Occupations
26 Code, must clearly state:

27 (1) "physician," if the professional holds a license

1 under Subtitle B of that title;

2 (2) "acupuncturist," "chiropractor," "midwife,"
3 "physician assistant," "podiatrist," or "surgical assistant," as
4 applicable, if the professional holds a license under Subtitle C of
5 that title;

6 (3) "dental hygienist" or "dentist," as applicable, if
7 the professional holds a license under Subtitle D of that title;

8 (4) "advanced practice registered nurse," "licensed
9 vocational nurse," "registered nurse," "nurse practitioner,"
10 "nurse midwife," "nurse anesthetist," or "clinical nurse
11 specialist," as applicable, if the professional holds a license
12 under Subtitle E of that title;

13 (5) "optometrist" or "therapeutic optometrist," as
14 applicable, if the professional holds a license under Subtitle F of
15 that title;

16 (6) "audiologist" or "speech-language pathologist,"
17 as applicable, if the professional holds a license under Subtitle G
18 of that title;

19 (7) "athletic trainer," "massage therapist,"
20 "occupational therapist," "occupational therapy assistant,"
21 "physical therapist," or "physical therapist assistant," as
22 applicable, if the professional holds a license under Subtitle H of
23 that title;

24 (8) "pharmacist," if the professional holds a license
25 under Subtitle J of that title;

26 (9) "medical physicist," "medical radiologic
27 technologist," "orthotist," "orthotist assistant,"

1 "perfusionist," "prosthetist," "prosthetist assistant," or
2 "respiratory care practitioner," as applicable, if the
3 professional holds a license under Subtitle K of that title; or
4 (10) "dietitian," if the professional holds a license
5 under Subtitle M of that title.

6 Sec. 185.003. NOTICE OF HEALTH PROFESSIONAL LICENSE. A
7 health facility shall post in a conspicuous location in each office
8 where a health professional provides health care services a written
9 notice stating the type of license the professional holds. The
10 notice must be printed using an easily readable font and type size.

11 Sec. 185.004. HEALTH CARE SERVICES PROVIDED BY NONPHYSICIAN
12 HEALTH PROFESSIONAL. (a) If a nonphysician health professional
13 provides health care services in a health facility under the
14 supervision of a physician, the facility shall post in a
15 conspicuous location in each office where the professional provides
16 health care services a written notice stating:

17 (1) the name of the supervising physician;
18 (2) the supervising physician's medical license
19 number;

20 (3) any board certification or specialty in which the
21 physician is certified;

22 (4) the physician's practice contact information,
23 including the telephone number and address of the practice;

24 (5) either:
25 (A) the hours the physician is scheduled to be
26 present at the practice location; or

27 (B) if the physician is not scheduled to be

1 present at the practice location, the statement: "No physician on
2 site"; and

3 (6) the statement: "Any patient may request treatment
4 by a physician. Notify a staff member at this location if you want
5 to request this option."

6 (b) A patient may choose to be treated by the supervising
7 physician of a nonphysician health professional. If the patient
8 requests treatment by the supervising physician, the physician must
9 see the patient not later than the 30th day after the date the
10 patient makes the request. The physician may see the patient in
11 person or through an acceptable telemedicine medical services
12 platform.

13 Sec. 185.005. PROHIBITED CONDUCT. A health professional
14 may not:

15 (1) knowingly aid, abet, permit, advise, or solicit a
16 person who is not licensed to practice the health profession in
17 which the professional is licensed to engage in an act contrary to
18 that professional licensure; or

19 (2) delegate to or contract with another health
20 professional to provide health care services if the professional
21 knows, or has reason to know, that the other professional is not
22 authorized for delegation of or to contract for those services
23 under the professional's license.

24 Sec. 185.006. ADMINISTRATIVE PENALTY. (a) The commission
25 or the regulatory agency for a health professional, including the
26 Texas Medical Board, the Texas Physician Assistant Board, and the
27 Texas Board of Nursing, may impose an administrative penalty

1 against a health facility or professional regulated by the
2 commission or agency who violates this chapter or a rule adopted
3 under this chapter.

4 (b) The amount of the penalty imposed may not exceed \$1,000
5 for each violation, and each day a violation continues or occurs is
6 a separate violation for the purpose of imposing a penalty. The
7 amount shall be based on:

8 (1) the seriousness of the violation, including the
9 nature, circumstances, extent, and gravity of the violation;

10 (2) the history of previous violations;

11 (3) the amount necessary to deter a future violation;

12 (4) the efforts to correct the violation; and

13 (5) any other matter that justice may require.

14 (c) The enforcement of the penalty may be stayed during the
15 time the order is under judicial review if the health facility or
16 professional pays the penalty to the clerk of the court or files a
17 supersedeas bond with the court in the amount of the penalty. A
18 facility or professional that cannot afford to pay the penalty or
19 file the bond may stay the enforcement by filing an affidavit in the
20 manner required by the Texas Rules of Civil Procedure for a party
21 who cannot afford to file security for costs, subject to the right
22 of the commission or regulatory agency to contest the affidavit as
23 provided by those rules.

24 (d) The attorney general may sue to collect the penalty.
25 The attorney general may recover reasonable expenses incurred in
26 obtaining relief under this subsection, including court costs,
27 reasonable attorney's fees, investigation costs, witness fees, and

1 deposition expenses.

2 (e) A proceeding to impose the penalty is considered to be a
3 contested case under Chapter 2001, Government Code.

4 Sec. 185.007. CIVIL PENALTY. (a) A health facility that
5 violates this chapter is liable to the state for a civil penalty of
6 not more than \$1,000 for each violation. Each day of a continuing
7 violation constitutes a separate ground for recovery.

8 (b) The attorney general may sue to collect a civil penalty
9 under this section. The attorney general may recover reasonable
10 expenses incurred in obtaining relief under this section, including
11 court costs, reasonable attorney's fees, investigation costs,
12 witness fees, and deposition expenses.

13 SECTION 2. The heading to Subchapter E, Chapter 101,
14 Occupations Code, is amended to read as follows:

15 SUBCHAPTER E. CERTAIN PRACTICES RELATED TO ADVERTISING AND BILLING
16 PROHIBITED [~~GROUND FOR LICENSE REVOCATION OR DENIAL~~]

17 SECTION 3. Section 101.201, Occupations Code, is amended by
18 amending Subsection (b) and adding Subsections (c) and (d) to read
19 as follows:

20 (b) False, misleading, or deceptive advertising or
21 advertising not readily subject to verification includes
22 advertising that:

23 (1) makes a material misrepresentation of fact or
24 omits a fact necessary to make the statement as a whole not
25 materially misleading;

26 (2) makes a representation likely to create an
27 unjustified expectation about the results of a health care service

1 or procedure;

2 (3) compares a health care professional's services
3 with another health care professional's services unless the
4 comparison can be factually substantiated;

5 (4) contains a testimonial;

6 (5) causes confusion or misunderstanding as to the
7 credentials, education, or licensing of a health care professional,
8 including using a title, term, or other words that misstate,
9 falsely describe, falsely hold out, or falsely detail the health
10 care professional's:

11 (A) professional skills;

12 (B) training;

13 (C) expertise;

14 (D) educational degree;

15 (E) specialty certification; or

16 (F) licensure;

17 (6) represents that health care insurance deductibles
18 or copayments may be waived or are not applicable to health care
19 services to be provided if the deductibles or copayments are
20 required;

21 (7) represents that the benefits of a health benefit
22 plan will be accepted as full payment when deductibles or
23 copayments are required;

24 (8) makes a representation that is designed to take
25 advantage of the fears or emotions of a particularly susceptible
26 type of patient; or

27 (9) represents in the use of a professional name a

1 title or professional identification that is associated with
2 another profession and the health care professional is not licensed
3 or otherwise authorized to practice that profession [~~expressly or~~
4 ~~commonly reserved to or used by another profession or~~
5 ~~professional~~].

6 (c) For purposes of this section, advertising that does not
7 include the name of the health care professional and the
8 professional identification required by Section 104.003 is
9 considered false, misleading, deceptive, or not readily subject to
10 verification.

11 (d) In this section, "advertising" includes:

12 (1) any printed, electronic, or oral statement, with
13 respect to the provision of health care services by a health care
14 professional:

15 (A) that is communicated or disseminated to the
16 public;

17 (B) that:

18 (i) is intended to encourage a person to use
19 the professional's services; or

20 (ii) for a commercial purpose, names the
21 professional in connection with the practice, profession, or
22 institution in which the professional provides health care
23 services; and

24 (C) the preparation, communication, or
25 dissemination of which is controlled by the professional or a group
26 to which the professional is affiliated; and

27 (2) any communication or statement not described by

1 Subdivision (1) but that is used in the regular course of the
2 professional's business for the purpose of promoting the
3 professional's services to the public, including:

4 (A) business cards;

5 (B) letterhead;

6 (C) signs;

7 (D) pamphlets;

8 (E) brochures;

9 (F) e-mails and any other communication or
10 statement transmitted through the Internet; or

11 (G) audio or video communications, including
12 television or radio advertisements.

13 SECTION 4. Subchapter E, Chapter 101, Occupations Code, is
14 amended by adding Section 101.205 to read as follows:

15 Sec. 101.205. ADMINISTRATIVE PENALTY. (a) A health
16 licensing agency that issues a license, certificate, or other
17 authorization under this title, may impose an administrative
18 penalty on a person who:

19 (1) holds a license, certificate, or other
20 authorization issued by the health licensing agency; and

21 (2) violates Section 101.201.

22 (b) The amount of an administrative penalty may not exceed
23 \$1,000 for each violation. Each day a violation continues or occurs
24 is a separate violation for purposes of imposing a penalty.

25 (c) A proceeding to impose an administrative penalty under
26 this section is subject to Chapter 2001, Government Code.

27 SECTION 5. Section 104.003, Occupations Code, is amended by

1 amending Subsections (b) and (c) and adding Subsection (h) to read
2 as follows:

3 (b) A person who is licensed by the Texas Medical [~~State~~]
4 Board [~~of Medical Examiners~~] and holds a doctor of medicine degree
5 shall use:

6 (1) physician or surgeon, M.D.;

7 (2) doctor, M.D.; [~~or~~]

8 (3) doctor of medicine, M.D.; or

9 (4) a designation indicating that the person is
10 certified or eligible for certification, as applicable, by a
11 certifying board of the American Board of Medical Specialties, the
12 American Board of Oral and Maxillofacial Surgery, the National
13 Board of Physicians and Surgeons, or a successor organization to
14 those organizations.

15 (c) A person who is licensed by the Texas Medical [~~State~~]
16 Board [~~of Medical Examiners~~] and holds a doctor of osteopathy
17 degree shall use:

18 (1) physician or surgeon, D.O.;

19 (2) osteopathic physician or surgeon;

20 (3) doctor, D.O.;

21 (4) doctor of osteopathy;

22 (5) doctor of osteopathic medicine;

23 (6) osteopath; [~~or~~]

24 (7) D.O.; or

25 (8) a designation indicating that the person is
26 certified or eligible for certification, as applicable, by a
27 certifying board of the American Osteopathic Association, the

1 American Board of Oral and Maxillofacial Surgery, the National
2 Board of Physicians and Surgeons, or a successor organization to
3 those organizations.

4 (h) A person licensed under this title and not described by
5 Subsection (b), (c), (d), (e), (f), or (g) may only use a title
6 authorized by the law under which the person is licensed.

7 SECTION 6. Chapter 104, Occupations Code, is amended by
8 adding Section 104.0035 to read as follows:

9 Sec. 104.0035. FALSE AND DECEPTIVE ADVERTISING. A healing
10 art practitioner may not use advertising that is false, misleading,
11 or deceptive, or not readily subject to verification as provided by
12 Section 101.201.

13 SECTION 7. Chapter 104, Occupations Code, is amended by
14 adding Section 104.008 to read as follows:

15 Sec. 104.008. ADMINISTRATIVE PENALTY. (a) A healing art
16 licensing board that issues a license, certificate, or other
17 authorization described by Section 104.003, may impose an
18 administrative penalty on a person who:

19 (1) holds a license, certificate, or other
20 authorization issued by the healing art licensing board; and

21 (2) violates this chapter.

22 (b) The amount of an administrative penalty may not exceed
23 \$1,000 for each violation. Each day a violation continues or occurs
24 is a separate violation for purposes of imposing a penalty.

25 (c) A proceeding to impose an administrative penalty under
26 this section is subject to Chapter 2001, Government Code.

27 SECTION 8. Section 165.156, Occupations Code, is amended to

1 read as follows:

2 Sec. 165.156. MISREPRESENTATION REGARDING ENTITLEMENT TO
3 PRACTICE MEDICINE. A person, partnership, trust, association, or
4 corporation commits an offense if the person, partnership, trust,
5 association, or corporation, through the use of any title,
6 abbreviation, description of services, designation, letters,
7 words, or terms, alone or in combination with any other title,
8 affixed on stationery or on advertisements, or in any other manner,
9 including oral or written communications, indicates or induces
10 another to believe that the person, partnership, trust,
11 association, or corporation is entitled to practice medicine if the
12 person, partnership, trust, association, or corporation is not
13 licensed to do so.

14 SECTION 9. Subchapter D, Chapter 165, Occupations Code, is
15 amended by adding Section 165.1565 to read as follows:

16 Sec. 165.1565. USE OF TITLE. (a) In this section, "medical
17 or medical specialty title" means:

- 18 (1) "doctor of medicine" or "M.D.";
- 19 (2) "doctor of osteopathy" or "D.O.";
- 20 (3) "physician";
- 21 (4) "surgeon";
- 22 (5) "osteopathic physician";
- 23 (6) "osteopathic surgeon";
- 24 (7) "doctor";
- 25 (8) "aesthetic surgeon";
- 26 (9) "age management medicine physician";
- 27 (10) "allergist";

- 1 (11) "anesthesiologist";
- 2 (12) "associate physician";
- 3 (13) "cosmetic surgeon";
- 4 (14) "dermatologist";
- 5 (15) "emergency medicine doctor";
- 6 (16) "emergency medicine physician";
- 7 (17) "endocrinologist";
- 8 (18) "environmental medicine physician";
- 9 (19) "family medicine doctor";
- 10 (20) "family medicine physician";
- 11 (21) "family practice doctor";
- 12 (22) "family practice physician";
- 13 (23) "functional medicine doctor";
- 14 (24) "functional medicine physician";
- 15 (25) "gastroenterologist";
- 16 (26) "general practitioner";
- 17 (27) "geriatrician";
- 18 (28) "graduate physician";
- 19 (29) "gynecologist";
- 20 (30) "hematologist";
- 21 (31) "hepatologist";
- 22 (32) "hospitalist";
- 23 (33) "house officer";
- 24 (34) "intensivist";
- 25 (35) "internal medicine physician";
- 26 (36) "intern";
- 27 (37) "internist";

- 1 (38) "laryngologist";
- 2 (39) "neonatologist";
- 3 (40) "nephrologist";
- 4 (41) "neurologist";
- 5 (42) "nocturnist";
- 6 (43) "obstetrician";
- 7 (44) "occupational health physician";
- 8 (45) "occupational medicine doctor";
- 9 (46) "occupational medicine physician";
- 10 (47) "oncologist";
- 11 (48) "ophthalmologist";
- 12 (49) "orthopedic surgeon";
- 13 (50) "orthopedist";
- 14 (51) "osteopath";
- 15 (52) "otolaryngologist";
- 16 (53) "otologist";
- 17 (54) "otorhinolaryngologist";
- 18 (55) "pathologist";
- 19 (56) "pediatrician";
- 20 (57) "physiatrist";
- 21 (58) "physical medicine and rehabilitation
- 22 physician";
- 23 (59) "physician associate";
- 24 (60) "physician graduate";
- 25 (61) "plastic surgeon";
- 26 (62) "primary care doctor";
- 27 (63) "primary care physician";

1 (64) "proctologist";

2 (65) "psychiatrist";

3 (66) "radiologist";

4 (67) "resident";

5 (68) "rheumatologist";

6 (69) "rhinologist";

7 (70) "urogynecologist";

8 (71) "urologist"; or

9 (72) another title specified by board rule.

10 (b) Except as provided by Section 104.004, a person who is
11 not licensed to practice medicine by the board may not:

12 (1) use or publicly display a medical or medical
13 specialty title in connection with the person's name either alone
14 or in combination with another word or title; or

15 (2) indicate or induce another to believe that the
16 person is an attending doctor or attending physician or practices
17 medicine.

18 (c) In a clinical setting, the terms "fellowship" and
19 "residency" are reserved for postgraduate medical, dental,
20 podiatric, and pharmacologic education and training. The terms may
21 not be used to describe nursing or any nonmedical postgraduate
22 training.

23 (d) In a clinical setting, the terms "attending,"
24 "attending doctor," and "attending physician" are reserved for
25 physicians who are licensed to practice medicine and who have
26 completed a postgraduate medical residency training program.

27 (e) In a clinical setting, "physician associate,"

1 "associate physician," and "physician graduate" are reserved for
2 physicians licensed to practice medicine who:

3 (1) are graduates of a board-approved medical school
4 or osteopathic medical school; and

5 (2) have passed the second component of the United
6 States Medical Licensing Examination or the equivalent component of
7 another board-approved licensing examination.

8 SECTION 10. Section 204.203, Occupations Code, is amended
9 to read as follows:

10 Sec. 204.203. IDENTIFICATION REQUIREMENTS. A physician
11 assistant shall:

12 (1) keep the physician assistant's license available
13 for inspection at the physician assistant's primary place of
14 business; and

15 (2) when engaged in the physician assistant's
16 professional activities, wear a name tag identifying the license
17 holder as a physician assistant by title or the initials "P.A.".

18 SECTION 11. Subchapter E, Chapter 204, Occupations Code, is
19 amended by adding Section 204.2035 to read as follows:

20 Sec. 204.2035. FALSE AND DECEPTIVE ADVERTISING. A
21 physician assistant may not use advertising that is false,
22 misleading, deceptive, or not readily subject to verification as
23 provided by Section 101.201.

24 SECTION 12. Sections 301.351(a), (b), and (c), Occupations
25 Code, are amended to read as follows:

26 (a) A person who holds a license [~~as a registered nurse~~]
27 under this chapter[+]

1 ~~[(1)]~~ is referred to as:

2 (1) a registered nurse or ~~[, and~~

3 ~~[(2) may use the abbreviation]~~ "R.N.";

4 (2) a licensed vocational nurse or "L.V.N.";

5 (3) an advanced practice registered nurse or
6 "A.P.R.N.";

7 (4) a nurse practitioner or "N.P.";

8 (5) a nurse midwife;

9 (6) a certified registered nurse anesthetist or
10 "C.R.N.A."; or

11 (7) a clinical nurse specialist or "C.N.S.".

12 (b) Except as provided by Section 104.004, a [A] person who
13 holds a license ~~[as a vocational nurse]~~ under this chapter may not
14 use the title "doctor" unless the person also holds a license issued
15 by the Texas Medical Board under Subtitle B, as provided by Section
16 165.1565. ~~[, and~~

17 ~~[(1) is referred to as a licensed vocational nurse or~~
18 ~~vocational nurse, and~~

19 ~~[(2) may use the abbreviation "L.V.N." or "V.N."]~~

20 (c) While interacting with the public in a nursing role,
21 each nurse shall wear a clearly legible insignia identifying the
22 nurse in accordance with Subsection (a) ~~[as a registered or~~
23 ~~vocational nurse]~~. The insignia may not contain information other
24 than:

25 (1) the appropriate ~~[registered or vocational nurse]~~
26 designation;

27 (2) the nurse's name, certifications, academic

1 degrees, or practice position;

2 (3) the name of the employing facility or agency, or
3 other employer;

4 (4) a picture of the nurse; or

5 (5) any other information authorized by the board.

6 SECTION 13. Subchapter H, Chapter 301, Occupations Code, is
7 amended by adding Section 301.3515 to read as follows:

8 Sec. 301.3515. FALSE AND DECEPTIVE ADVERTISING. A nurse
9 may not use advertising that is false, misleading, deceptive, or
10 not readily subject to verification as provided by Section 101.201.

11 SECTION 14. Section 104.007, Occupations Code, is repealed.

12 SECTION 15. Each state regulatory agency that issues a
13 license to a health professional or health facility, including the
14 Texas Medical Board, Texas Physician Assistant Board, Texas Board
15 of Nursing, and Health and Human Services Commission, shall adopt
16 rules necessary to implement Chapter 185, Health and Safety Code,
17 as added by this Act, and Chapters 101 and 104, Occupations Code, as
18 amended by this Act, not later than January 1, 2024.

19 SECTION 16. Chapter 185, Health and Safety Code, as added by
20 this Act, applies to the provision of health care services on or
21 after January 1, 2024.

22 SECTION 17. The changes in law made by this Act apply only
23 to conduct that occurs on or after the effective date of this Act.
24 Conduct that occurs before that date is governed by the law in
25 effect on the date the conduct occurred, and the former law is
26 continued in effect for that purpose.

27 SECTION 18. This Act takes effect September 1, 2023.