

By: Laubenberg

H.B. No. 3283

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of independent emergency medical care facilities; providing an administrative penalty; creating an offense.

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

SECTION 1. Subtitle B, Title 4, Health and Safety Code, is amended by adding Chapter 254 to read as follows:

CHAPTER 254. INDEPENDENT EMERGENCY MEDICAL CARE FACILITIES

Sec. 254.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of State Health Services.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Facility" means an independent emergency medical care facility.

(4) "Independent emergency medical care facility" means a facility, structurally separate and distinct from a hospital, that provides limited services for the treatment of a medical emergency.

Sec. 254.002. LICENSE REQUIRED. (a) Except as provided by Section 254.003, a person may not establish or operate an independent emergency medical care facility in this state without a license issued under this chapter.

(b) Each facility must have a separate license.

1 (c) A license issued under this chapter is not transferable
2 or assignable.

3 Sec. 254.003. EXEMPTIONS FROM LICENSING REQUIREMENT. The
4 following facilities are not required to be licensed under this
5 chapter:

6 (1) an office or clinic of a licensed physician,
7 dentist, or podiatrist;

8 (2) a licensed nursing home;

9 (3) a licensed hospital; or

10 (4) a licensed ambulatory surgical center.

11 Sec. 254.004. LICENSE APPLICATION AND ISSUANCE. (a) An
12 applicant for a license under this chapter must submit an
13 application to the department on a form prescribed by the
14 department.

15 (b) Each application must be accompanied by a nonrefundable
16 license fee in an amount set by the executive commissioner.

17 (c) The application must contain evidence that there is at
18 least one physician and one nurse on the staff of the facility who
19 is licensed by the appropriate state licensing board.

20 (d) The department shall issue a license if, after
21 inspection and investigation, it finds that the applicant and the
22 facility meet the requirements of this chapter and the standards
23 adopted under this chapter.

24 (e) The license fee must be paid annually on renewal of the
25 license.

26 Sec. 254.005. INSPECTIONS. The department may inspect a
27 facility at reasonable times as necessary to ensure compliance with

1 this chapter.

2 Sec. 254.006. FEES. The executive commissioner shall set
3 fees imposed by this chapter in amounts reasonable and necessary to
4 defray the cost of administering this chapter.

5 Sec. 254.007. INDEPENDENT EMERGENCY MEDICAL CARE FACILITY
6 LICENSING FUND. All fees collected under this chapter shall be
7 deposited in the state treasury to the credit of the independent
8 emergency medical care facility licensing fund and may be
9 appropriated to the department only to administer and enforce this
10 chapter.

11 Sec. 254.008. ADOPTION OF RULES. The executive
12 commissioner shall adopt rules necessary to implement this chapter,
13 including requirements for the issuance, renewal, denial,
14 suspension, and revocation of a license to operate a facility.

15 Sec. 254.009. MINIMUM STANDARDS. Rules adopted under this
16 chapter must contain minimum standards applicable to a facility and
17 for:

18 (1) the construction and design of the facility,
19 including plumbing, heating, lighting, ventilation, and other
20 design standards necessary to ensure the health and safety of
21 patients;

22 (2) the number, qualifications, and organization of
23 the professional staff and other personnel;

24 (3) the administration of the facility;

25 (4) the equipment essential to the health and welfare
26 of the patients;

27 (5) the sanitary and hygienic conditions within the

1 facility and its surroundings;

2 (6) the integration of the facility into the local
3 emergency medical services system;

4 (7) the contents, maintenance, and release of medical
5 records;

6 (8) the minimal level of care and standards for denial
7 of care;

8 (9) the provision of laboratory and radiological
9 services;

10 (10) the distribution and administration of drugs and
11 controlled substances; and

12 (11) a quality assurance program for patient care.

13 Sec. 254.010. DENIAL, SUSPENSION, PROBATION, OR REVOCATION
14 OF LICENSE. (a) The department may deny, suspend, or revoke a
15 license for a violation of this chapter or a rule adopted under this
16 chapter.

17 (b) The denial, suspension, or revocation of a license by
18 the department and the appeal from that action are governed by the
19 procedures for a contested case hearing under Chapter 2001,
20 Government Code.

21 (c) If the department finds that a facility is in repeated
22 noncompliance with this chapter or rules adopted under this chapter
23 but that the noncompliance does not endanger public health and
24 safety, the department may schedule the facility for probation
25 rather than suspending or revoking the facility's license. The
26 department shall provide notice to the facility of the probation
27 and of the items of noncompliance not later than the 10th day before

1 the date the probation period begins. The department shall
2 designate a period of not less than 30 days during which the
3 facility remains under probation. During the probation period, the
4 facility must correct the items that were in noncompliance and
5 report the corrections to the department for approval.

6 (d) The department may suspend or revoke the license of a
7 facility that does not correct items that were in noncompliance or
8 that does not comply with this chapter or the rules adopted under
9 this chapter within the applicable probation period.

10 Sec. 254.011. EMERGENCY SUSPENSION. (a) The department
11 may issue an emergency order to suspend a license issued under this
12 chapter if the department has reasonable cause to believe that the
13 conduct of a license holder creates an immediate danger to the
14 public health and safety.

15 (b) An emergency suspension under this section is effective
16 immediately without a hearing on notice to the license holder.

17 (c) On written request of the license holder, the department
18 shall conduct a hearing not earlier than the 10th day or later than
19 the 30th day after the date the hearing request is received to
20 determine if the emergency suspension is to be continued, modified,
21 or rescinded.

22 (d) A hearing and any appeal under this section are governed
23 by the department's rules for a contested case hearing and Chapter
24 2001, Government Code.

25 Sec. 254.012. INJUNCTION. (a) The department may petition
26 a district court for a temporary restraining order to restrain a
27 continuing violation of the standards or licensing requirements

1 provided under this chapter if the department finds that the
2 violation creates an immediate threat to the health and safety of
3 the patients of a facility.

4 (b) A district court, on petition of the department and on a
5 finding by the court that a person is violating the standards or
6 licensing requirements provided under this chapter, may by
7 injunction:

8 (1) prohibit a person from continuing a violation of
9 the standards or licensing requirements provided under this
10 chapter;

11 (2) restrain or prevent the establishment or operation
12 of a facility without a license issued under this chapter; or

13 (3) grant any other injunctive relief warranted by the
14 facts.

15 (c) The attorney general shall institute and conduct a suit
16 authorized by this section at the request of the department.

17 (d) Venue for a suit brought under this section is in the
18 county in which the facility is located or in Travis County.

19 Sec. 254.013. CRIMINAL PENALTY. (a) A person commits an
20 offense if the person violates Section 254.002(a).

21 (b) An offense under this section is a Class C misdemeanor.

22 (c) Each day of a continuing violation constitutes a
23 separate offense.

24 Sec. 254.014. IMPOSITION OF ADMINISTRATIVE PENALTY. (a)
25 The department may impose an administrative penalty on a person
26 licensed under this chapter who violates this chapter or a rule or
27 order adopted under this chapter. A penalty collected under this

1 section or Section 254.015 shall be deposited in the state treasury
2 in the general revenue fund.

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

5 (c) The amount of the penalty may not exceed \$1,000 for each
6 violation, and each day a violation continues or occurs is a
7 separate violation for purposes of imposing a penalty. The total
8 amount of the penalty assessed for a violation continuing or
9 occurring on separate days under this subsection may not exceed
10 \$5,000.

11 (d) The amount shall be based on:

12 (1) the seriousness of the violation, including the
13 nature, circumstances, extent, and gravity of the violation;

14 (2) the threat to health or safety caused by the
15 violation;

16 (3) the history of previous violations;

17 (4) the amount necessary to deter a future violation;

18 (5) whether the violator demonstrated good faith,
19 including when applicable whether the violator made good faith
20 efforts to correct the violation; and

21 (6) any other matter that justice may require.

22 (e) If the department initially determines that a violation
23 occurred, the department shall give written notice of the report by
24 certified mail to the person.

25 (f) The notice under Subsection (e) must:

26 (1) include a brief summary of the alleged violation;

27 (2) state the amount of the recommended penalty; and

1 (3) inform the person of the person's right to a
2 hearing on the occurrence of the violation, the amount of the
3 penalty, or both.

4 (g) Within 20 days after the date the person receives the
5 notice under Subsection (e), the person in writing may:

6 (1) accept the determination and recommended penalty
7 of the department; or

8 (2) make a request for a hearing on the occurrence of
9 the violation, the amount of the penalty, or both.

10 (h) If the person accepts the determination and recommended
11 penalty or if the person fails to respond to the notice, the
12 commissioner of state health services by order shall approve the
13 determination and impose the recommended penalty.

14 (i) If the person requests a hearing, the commissioner of
15 state health services shall refer the matter to the State Office of
16 Administrative Hearings, which shall promptly set a hearing date
17 and give written notice of the time and place of the hearing to the
18 person. An administrative law judge of the State Office of
19 Administrative Hearings shall conduct the hearing.

20 (j) The administrative law judge shall make findings of fact
21 and conclusions of law and promptly issue to the commissioner of
22 state health services a proposal for a decision about the
23 occurrence of the violation and the amount of a proposed penalty.

24 (k) Based on the findings of fact, conclusions of law, and
25 proposal for a decision, the commissioner of state health services
26 by order may:

27 (1) find that a violation occurred and impose a

penalty; or

(2) find that a violation did not occur.

(1) The notice of the order under Subsection (k) that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Sec. 254.015. PAYMENT AND COLLECTION OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW. (a) Within 30 days after the date an order of the commissioner of state health services under Section 254.014(k) that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the commissioner's order contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the commissioner's order is final; or

(2) request the court to stay enforcement of the penalty by:

1 (A) filing with the court a sworn affidavit of
2 the person stating that the person is financially unable to pay the
3 penalty and is financially unable to give the supersedeas bond; and

4 (B) sending a copy of the affidavit to the
5 executive commissioner by certified mail.

6 (c) If the commissioner of state health services receives a
7 copy of an affidavit under Subsection (b)(2), the commissioner may
8 file with the court, within five days after the date the copy is
9 received, a contest to the affidavit. The court shall hold a
10 hearing on the facts alleged in the affidavit as soon as practicable
11 and shall stay the enforcement of the penalty on finding that the
12 alleged facts are true. The person who files an affidavit has the
13 burden of proving that the person is financially unable to pay the
14 penalty or to give a supersedeas bond.

15 (d) If the person does not pay the penalty and the
16 enforcement of the penalty is not stayed, the penalty may be
17 collected. The attorney general may sue to collect the penalty.

18 (e) If the court sustains the finding that a violation
19 occurred, the court may uphold or reduce the amount of the penalty
20 and order the person to pay the full or reduced amount of the
21 penalty.

22 (f) If the court does not sustain the finding that a
23 violation occurred, the court shall order that a penalty is not
24 owed.

25 (g) If the person paid the penalty and if the amount of the
26 penalty is reduced or the penalty is not upheld by the court, the
27 court shall order, when the court's judgment becomes final, that

1 the appropriate amount plus accrued interest be remitted to the
2 person within 30 days after the date that the judgment of the court
3 becomes final. The interest accrues at the rate charged on loans to
4 depository institutions by the New York Federal Reserve Bank. The
5 interest shall be paid for the period beginning on the date the
6 penalty is paid and ending on the date the penalty is remitted.

7 (h) If the person gave a supersedeas bond and the penalty is
8 not upheld by the court, the court shall order, when the court's
9 judgment becomes final, the release of the bond. If the person gave
10 a supersedeas bond and the amount of the penalty is reduced, the
11 court shall order the release of the bond after the person pays the
12 reduced amount.

13 SECTION 2. (a) Not later than September 1, 2008, an
14 independent emergency medical care facility must obtain a license
15 as required by Chapter 254, Health and Safety Code, as added by this
16 Act.

17 (b) Not later than March 1, 2008, the executive commissioner
18 of the Health and Human Services Commission shall adopt rules as
19 required by Chapter 254, Health and Safety Code, as added by this
20 Act.

21 SECTION 3. This Act takes effect September 1, 2007, except
22 that Sections 254.010, 254.011, 254.012, 254.013, 254.014, and
23 254.015, Health and Safety Code, as added by this Act, take effect
24 September 1, 2008.