

By: Deuell S.B. No. 1115
(In the Senate - Filed March 5, 2007; March 14, 2007, read first time and referred to Committee on Health and Human Services; April 27, 2007, reported adversely, with favorable Committee Substitute by the following vote: Yeas 9, Nays 0; April 27, 2007, sent to printer.)

COMMITTEE SUBSTITUTE FOR S.B. No. 1115 By: Deuell

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of independent emergency medical care facilities; providing penalties; 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:

(A) receives and treats individuals requiring treatment or stabilization of an emergency or immediate medical condition;

(B) determines if an individual has an emergency or immediate medical condition; or

(C) except for mass trauma preparation or planning, is fully capable of providing Level IV trauma care, as defined by the department.

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.

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

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

(1) a licensed hospital;

(2) a hospital that is owned or operated by this state;

(3) a facility located within or connected to a hospital described by Subdivision (1) or (2);

(4) an independent emergency medical care facility that is owned or operated by a hospital described by Subdivision (1) or (2);

(5) a licensed nursing home; or

(6) a licensed ambulatory surgical center.

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

(b) Each application must be accompanied by a nonrefundable license fee in an amount of not less than \$500 and not more than \$1,000 as set by the executive commissioner.

(c) The application must contain evidence that the composition of the facility's staff meets standards adopted by the executive commissioner under this chapter.

(d) The department shall issue a license if, after

inspection and investigation, it finds that the applicant and the facility meet the requirements of this chapter and the standards adopted under this chapter.

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

Sec. 254.005. FACILITY REQUIREMENTS. To be licensed under this chapter, a facility must:

(1) provide necessary medical equipment for the evaluation or resuscitation of critically or seriously injured patients, including in each treatment room:

(A) airway control and ventilation equipment, including laryngoscope and endotracheal tubes;

(B) electrocardiograph, oscilloscope, and defibrillator equipment;

(C) equipment for standard intravenous administration of fluids, catheters, and rapid infusers;

(D) standard surgical sets for thoracostomy, venous cutdown, central line insertion, and cricothyrotomy;

(E) long bone stabilization devices;

(F) stationary and portable x-ray capability; and

(G) computed tomography (CT) capability with accuracy, in accordance with the American College of Radiology, sufficient for the definitive diagnosis of all emergency medical conditions as defined by the American College of Emergency Physicians;

(2) be open to receive patients for a minimum of 12 hours a day, seven days a week, and if the facility is not open 24 hours a day, display clearly visible signage that provides:

(A) an indication of whether the facility is open or closed;

(B) information as to the facility's operating hours; and

(C) clear instructions directing a patient to a licensed hospital emergency room within 10 miles of the facility;

(3) have a referral, transmission, or admission agreement with a licensed hospital with an emergency room before the facility accepts any patient for treatment or diagnosis;

(4) be staffed with physicians, nurses, and other necessary staff with specialty training or experience in managing catastrophic illnesses or life-threatening injuries, including:

(A) emergency physicians who are credentialed for advanced cardiac life support, advanced trauma life support, and pediatric advanced life support;

(B) registered emergency nurses credentialed for advanced cardiac life support, pediatric advanced life support or emergency nursing pediatric course, and trauma nurse core course;

(C) a laboratory technician certified by the American Society of Clinical Pathologists or the American Medical Technologists to provide on-site clinical laboratory services for standard analysis of blood, urine, and other bodily fluids; and

(D) a radiology technician certified by the American Registry of Radiologic Technicians available to perform clinical radiology services, x-rays, and CT scans; and

(5) satisfy the minimum standards established under Section 254.011.

Sec. 254.006. INSPECTIONS. The department may inspect a facility at reasonable times as necessary to ensure compliance with this chapter.

Sec. 254.007. MONITORING. If a facility's failure to comply with this chapter creates a serious threat to the health and safety of the public, the department may appoint a monitor for the facility to ensure compliance with this chapter. The facility shall pay the cost of the monitor.

Sec. 254.008. FEES. The executive commissioner shall set fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter.

Sec. 254.009. INDEPENDENT EMERGENCY MEDICAL CARE FACILITY LICENSING FUND. All fees collected under this chapter shall be

deposited in the state treasury to the credit of the independent emergency medical care facility licensing fund and may be appropriated to the department only to administer and enforce this chapter.

Sec. 254.010. ADOPTION OF RULES. The executive commissioner shall adopt rules necessary to implement this chapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate a facility.

Sec. 254.011. MINIMUM STANDARDS. (a) Rules adopted under this chapter must contain:

(1) minimum facility design and construction standards that:

(A) are consistent with the American College of Emergency Physicians' published reference "ED Architectural Design"; and

(B) require a minimum of five beds for each 5,000 square feet of facility space; and

(2) standards for:

(A) the qualifications for the facility's professional staff and other personnel consistent with Section 254.005;

(B) the supervision of the facility's professional staff and other personnel;

(C) the provision and coordination of treatment and other services;

(D) the organizational structure, including the lines of authority and the delegation of responsibility;

(E) the keeping of clinical records; and

(F) any other aspect of the operation of a facility that the executive commissioner considers necessary to protect the public.

(b) This section does not authorize the executive commissioner to:

(1) establish the qualifications of a physician or other licensed health care practitioner; or

(2) permit a person to provide health care services who is not authorized to provide those services under another state law.

Sec. 254.012. COMPLAINTS. A person may file a complaint with the department against a facility licensed under this chapter.

Sec. 254.013. DENIAL, SUSPENSION, PROBATION, OR REVOCATION OF LICENSE. (a) The department may deny, suspend, or revoke a license for:

(1) a violation of this chapter or a rule adopted under this chapter; or

(2) a history of continuing noncompliance with this chapter or rules adopted under this chapter.

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

(c) If the department finds that a facility is in repeated noncompliance with this chapter or rules adopted under this chapter but that the noncompliance does not endanger public health and safety, the department may schedule the facility for probation rather than suspending or revoking the facility's license. The department shall provide notice to the facility of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. The department shall designate a period of not less than 30 days during which the facility remains under probation. During the probation period, the facility must correct the items that were in noncompliance and report the corrections to the department for approval.

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

Sec. 254.014. EMERGENCY SUSPENSION. (a) The department may issue an emergency order to suspend a license issued under this

chapter if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety.

(b) An emergency suspension under this section is effective on the later of the date stated in the suspension order or the 10th day after the date notice of the suspension is sent to the license holder.

(c) On written request of the license holder, the department shall conduct a hearing not earlier than the seventh day or later than the 10th day after the date the notice of emergency suspension is sent to the license holder to determine if the suspension is to take effect or be modified or rescinded.

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

Sec. 254.015. INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements provided under this chapter if the department finds that the violation creates an immediate threat to the health and safety of the patients of a facility.

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

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

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

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

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

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

Sec. 254.016. CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 254.002(a).

(b) An offense under this section is a misdemeanor punishable by a fine of not more than \$100 for the first offense and not more than \$200 for each subsequent offense.

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

Sec. 254.017. CIVIL PENALTY. (a) A person who violates this chapter or a rule adopted under this chapter is liable for a civil penalty if the department determines that the violation threatens the health and safety of a patient. A penalty under this section is in an amount of not less than \$100 and not more than \$500 for each violation.

(b) Each day a violation continues constitutes a separate violation for the purposes of this section.

(c) The attorney general may bring suit to recover a civil penalty under this section.

Sec. 254.018. IMPOSITION OF ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter. A penalty collected under this section or Section 254.019 shall be deposited in the state treasury in the general revenue fund.

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

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

(d) The amount shall be based on:

(1) the seriousness of the violation, including the

nature, circumstances, extent, and gravity of the violation;
 (2) the threat to health or safety caused by the violation;

(3) the history of previous violations;
 (4) the amount necessary to deter a future violation;
 (5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(6) any other matter that justice may require.
 (e) If the department initially determines that a violation occurred, the department shall give written notice of the report by certified mail to the person.

(f) The notice under Subsection (e) must:
 (1) include a brief summary of the alleged violation;
 (2) state the amount of the recommended penalty; and
 (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

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

(1) accept the determination and recommended penalty of the department; or
 (2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

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

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

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

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

(1) find that a violation occurred and impose a penalty; or
 (2) find that a violation did not occur.

(l) 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. 254.019. 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 254.018(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:

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

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

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

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

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

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

(g) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final. The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

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

SECTION 2. Section 1301.001, Insurance Code, is amended by adding Subdivision (3-a) to read as follows:

(3-a) "Independent emergency medical care facility" means a facility licensed under Chapter 254, Health and Safety Code.

SECTION 3. Section 1301.155, Insurance Code, is amended to read as follows:

Sec. 1301.155. EMERGENCY CARE. (a) In this section, "emergency care" means health care services provided in a hospital emergency facility, independent emergency medical care facility, or comparable facility to evaluate and stabilize a medical condition of a recent onset and severity, including severe pain, that would lead a prudent layperson possessing an average knowledge of medicine and health to believe that the person's condition, sickness, or injury is of such a nature that failure to get immediate medical care could result in:

- (1) placing the person's health in serious jeopardy;
- (2) serious impairment to bodily functions;
- (3) serious dysfunction of a bodily organ or part;
- (4) serious disfigurement; or
- (5) in the case of a pregnant woman, serious jeopardy to the health of the fetus.

(b) If an insured cannot reasonably reach a preferred provider, an insurer shall provide reimbursement for the following emergency care services at the preferred level of benefits until the insured can reasonably be expected to transfer to a preferred provider:

- (1) a medical screening examination or other evaluation required by state or federal law to be provided in the emergency facility of a hospital that is necessary to determine

whether a medical emergency condition exists;

(2) necessary emergency care services, including the treatment and stabilization of an emergency medical condition; and

(3) services originating in a hospital emergency facility or independent emergency medical care facility following treatment or stabilization of an emergency medical condition.

SECTION 4. (a) Not later than September 1, 2008, an independent emergency medical care facility must obtain a license as required by Chapter 254, Health and Safety Code, as added by this Act.

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

SECTION 5. Section 1301.155, Insurance Code, as amended by this Act, applies only to a preferred provider benefit plan delivered, issued for delivery, or renewed on or after September 1, 2008. A preferred provider benefit plan that is delivered, issued for delivery, or renewed before September 1, 2008, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for this purpose.

SECTION 6. This Act takes effect September 1, 2007, except that Sections 254.013 through 254.019, Health and Safety Code, as added by this Act, take effect September 1, 2008.

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