

By: Janek

S.B. No. 1358

A BILL TO BE ENTITLED

AN ACT

relating to 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 that receives and treats persons requiring
immediate medical care as described by this chapter.

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.

1 Sec. 254.003. EXEMPTIONS FROM LICENSING REQUIREMENT. A
2 facility located within or connected to a licensed hospital is not
3 required to be licensed under this chapter.

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

8 (b) Each application must be accompanied by a nonrefundable
9 license fee in an amount set by the department.

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

13 (d) The department shall issue a license if, after
14 inspection and investigation, it finds that the applicant and the
15 facility meet the requirements of this chapter and the standards
16 adopted under this chapter.

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

19 Sec. 254.005. INSPECTIONS; MONITORING. (a) The department
20 may inspect a facility at reasonable times as necessary to ensure
21 compliance with this chapter.

22 (b) If a facility's failure to comply with this chapter
23 creates a serious threat to the health and safety of the public, the
24 department may appoint a monitor for the facility to ensure
25 compliance with this chapter. The facility shall pay the cost of
26 the monitor.

27 Sec. 254.006. FEES. The department shall set fees imposed

1 by this chapter in amounts reasonable and necessary to defray the
2 cost of administering this chapter.

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

9 Sec. 254.008. ADOPTION OF RULES. The executive
10 commissioner shall adopt rules necessary to implement this chapter.

11 Sec. 254.009. MINIMUM SERVICES; MINIMUM STANDARDS. (a) To
12 be licensed under this chapter a facility must be:

- 13 (1) fully equipped;
14 (2) open 24 hours a day, seven days a week; and
15 (3) staffed with physicians who have specialty
16 training in managing catastrophic illnesses or life-threatening
17 injuries.

18 (b) Rules adopted under this chapter must contain:

- 19 (1) minimum standards applicable to a facility;
20 (2) requirements for the issuance, renewal, denial,
21 suspension, and revocation of a license to operate a facility; and

22 (3) standards for:

23 (A) the qualifications for the professional
24 staff and other personnel;

25 (B) the supervision of the professional staff and
26 other personnel;

27 (C) the provision and coordination of treatment

1 and other services;

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

4 (E) the keeping of clinical records; and

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

8 (c) This section does not authorize the executive
9 commissioner to:

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

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

15 Sec. 254.010. COMPLAINTS. A person may file a complaint
16 with the department against a facility licensed under this chapter.
17 A person who files a false complaint may be prosecuted under the
18 Penal Code.

19 Sec. 254.011. DENIAL, SUSPENSION, PROBATION, OR REVOCATION
20 OF LICENSE. (a) The department may deny, suspend, or revoke a
21 license for:

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

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

26 (b) The denial, suspension, or revocation of a license by
27 the department and the appeal from that action are governed by the

1 procedures for a contested case hearing under Chapter 2001,
2 Government Code.

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

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

19 Sec. 254.012. EMERGENCY SUSPENSION. (a) The department
20 may issue an emergency order to suspend a license issued under this
21 chapter if the department has reasonable cause to believe that the
22 conduct of a license holder creates an immediate danger to the
23 public health and safety.

24 (b) Subject to Subsection (c), an emergency suspension
25 under this section is effective on the later of the date stated in
26 the emergency order or on the 10th day after the date the notice is
27 sent to the license holder.

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

6 (d) A hearing and any appeal under this section are governed
7 by the department's rules for a contested case hearing and Chapter
8 2001, Government Code.

9 Sec. 254.013. INJUNCTION. (a) The department may petition
10 a district court for a temporary restraining order to restrain a
11 continuing violation of the standards or licensing requirements
12 provided under this chapter if the department finds that the
13 violation creates an immediate threat to the health and safety of
14 the patients of a facility.

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

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

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

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

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

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

3 Sec. 254.014. CRIMINAL PENALTY. (a) A person commits an
4 offense if the person violates Section 254.002(a).

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

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

10 Sec. 254.015. CIVIL PENALTY. (a) A person who violates this
11 chapter or who fails to comply with a rule adopted under this
12 chapter is liable for a civil penalty of not less than \$100 or more
13 than \$500 for each violation if the department determines that the
14 violation threatens the health and safety of a patient.

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

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

19 Sec. 254.016. IMPOSITION OF ADMINISTRATIVE PENALTY. (a)
20 The department may impose an administrative penalty on a person
21 licensed under this chapter who violates this chapter or a rule or
22 order adopted under this chapter.

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

25 (c) The amount of the penalty may not exceed \$1,000 for each
26 violation, and each day a violation continues or occurs is a
27 separate violation for purposes of imposing a penalty. The total

1 amount of the penalty assessed for a violation continuing or
2 occurring on separate days under this subsection may not exceed
3 \$5,000.

4 (d) The amount shall be based on:

5 (1) the seriousness of the violation, including the
6 nature, circumstances, extent, and gravity of the violation;

7 (2) the threat to health or safety caused by the
8 violation;

9 (3) the history of previous violations;

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

11 (5) whether the violator demonstrated good faith,
12 including when applicable whether the violator made good faith
13 efforts to correct the violation; and

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

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

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

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

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

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

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

26 (1) accept the determination and recommended penalty
27 of the department; or

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

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

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

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

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

20 (1) find that a violation occurred and impose a
21 penalty; or

22 (2) find that a violation did not occur.

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

27 Sec. 254.017. PAYMENT AND COLLECTION OF ADMINISTRATIVE

1 PENALTY; JUDICIAL REVIEW. (a) Within 30 days after the date an
2 order of the commissioner of state health services under Section
3 254.016(k) that imposes an administrative penalty becomes final,
4 the person shall:

5 (1) pay the penalty; or

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

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

11 (1) stay enforcement of the penalty by:

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

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

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

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

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

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

24 (B) sending a copy of the affidavit to the
25 commissioner of state health services by certified mail.

26 (c) If the commissioner of state health services receives a
27 copy of an affidavit under Subsection (b)(2), the commissioner may

1 file with the court, within five days after the date the copy is
2 received, a contest to the affidavit. The court shall hold a
3 hearing on the facts alleged in the affidavit as soon as practicable
4 and shall stay the enforcement of the penalty on finding that the
5 alleged facts are true. The person who files an affidavit has the
6 burden of proving that the person is financially unable to pay the
7 penalty or to give a supersedeas bond.

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

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

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

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

27 (h) If the person gave a supersedeas bond and the penalty is

1 not upheld by the court, the court shall order, when the court's
2 judgment becomes final, the release of the bond. If the person gave
3 a supersedeas bond and the amount of the penalty is reduced, the
4 court shall order the release of the bond after the person pays the
5 reduced amount.

6 Sec. 254.018. PENALTIES COLLECTED. A civil or
7 administrative penalty collected under this chapter shall be
8 deposited in the state treasury to the credit of the general revenue
9 fund.

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

12 (3-a) "Independent emergency medical care facility"
13 means a facility licensed under Chapter 254, Health and Safety
14 Code.

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

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

26 (1) placing the person's health in serious jeopardy;

27 (2) serious impairment to bodily functions;

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

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

10 (1) a medical screening examination or other
11 evaluation required by state or federal law to be provided in the
12 emergency facility of a hospital that is necessary to determine
13 whether a medical emergency condition exists;

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

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

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

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

27 SECTION 5. The change in law made by Section 1301.155,

1 Insurance Code, as amended by this Act, applies only to a preferred
2 provider benefit plan insurance policy delivered, issued for
3 delivery, or renewed on or after September 1, 2008.

4 SECTION 6. This Act takes effect September 1, 2007, except
5 that Sections 254.013, 254.014, 254.015, 254.016, 254.017, and
6 254.018, Health and Safety Code, as added by this Act, take effect
7 September 1, 2008.