

BILL ANALYSIS

Senate Research Center

H.B. 1357
By: Isett et al. (Deuell)
Health & Human Services
5/18/2009
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Over the last decade, new types of medical facilities have been established to address a part of the health care market currently lacking services, namely freestanding emergency medical care. A lack of regulation means there is no way of knowing how many of these facilities exist, although it is estimated there are approximately 40 in Texas. While these facilities are diverse in size and practice, none are currently regulated by the state in a manner consistent with other health care facilities. This has led to a recent Legislative Budget Board recommendation that freestanding emergency medical care facilities be regulated.

H.B. 1357 amends current law relating to the regulation of freestanding emergency medical care facilities, provides an administrative penalty, and creates an offense.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Sections 254.051 and 254.101, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle B, Title 4, Health and Safety Code, by adding Chapter 254, as follows:

CHAPTER 254. FREESTANDING EMERGENCY MEDICAL CARE FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 254.001. DEFINITIONS. Defines "department," "emergency care," "executive commissioner," "facility," and "freestanding emergency medical care facility."

[Reserves Sections 254.002-254.050 for expansion.]

SUBCHAPTER B. LICENSING

Sec. 254.051. LICENSE REQUIRED. (a) Prohibits a person, except as provided by Section 254.052, from establishing or operating a freestanding emergency medical care facility in this state without a license issued under this chapter.

(b) Prohibits a facility or person, except as provided by Section 254.052, from holding itself out to the public as an emergency medical facility or use any similar term defined by Department of State Health Services (DSHS) rule that would give the impression that the facility or person is providing emergency medical care treatment unless the facility or person holds a license issued under this chapter. Provides that the use of the term "emergency" or a similar term is also subject to Section 254.152.

(c) Requires that each facility have a separate license.

(d) Provides that a license issued under this chapter is not transferable or assignable.

(e) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) by rule to establish a classification and license for a facility that is in continuous operation 24 hours per day and 7 days per week.

(f) Requires the executive commissioner by rule to establish a classification and license for a facility that is not in continuous operation 24 hours per day and 7 days per week. Prohibits the minimum operating hours of a facility licensed under this subsection from being less than 7 days each week and from being less than 12 hours each day. Provides that this subsection and any rules adopted by the executive commissioner under this subsection expire August 31, 2013.

Sec. 254.052. EXEMPTIONS FROM LICENSING REQUIREMENT. Provides that the following facilities are not required to be licensed under this chapter: an office or clinic owned and operated by a manufacturing facility solely for the purposes of treating its employees and contractors; temporary emergency clinics in disaster areas; an office or clinic of a licensed physician, dentist, optometrist, or podiatrist; a licensed nursing home; a licensed hospital; or a licensed ambulatory surgical center.

Sec. 254.053. LICENSE APPLICATION AND ISSUANCE. (a) Requires an applicant for a license under this chapter to submit an application to DSHS on a form prescribed by DSHS.

(b) Requires that each application be accompanied by a nonrefundable license fee in an amount set by the executive commissioner.

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

(d) Requires DSHS to 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) Requires that the license fee be paid annually on renewal of the license.

[Reserves Sections 254.054-254.100 for expansion.]

SUBCHAPTER C. EXECUTIVE COMMISSIONER AND DEPARTMENT POWERS AND DUTIES

Sec. 254.101. ADOPTION OF RULES. Requires the executive commissioner to 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. 254.102. FEES. Requires the executive commissioner to set fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter.

Sec. 254.103. INSPECTIONS. Authorizes DSHS to inspect a facility at reasonable times as necessary to ensure compliance with this chapter.

Sec. 254.104. FREESTANDING EMERGENCY MEDICAL CARE FACILITY LICENSING FUND. Requires that all fees collected under this chapter be deposited in the state treasury to the credit of the freestanding emergency medical care facility licensing fund and may be appropriated to DSHS only to administer and enforce this chapter.

[Reserves Sections 254.105-254.150 for expansion.]

SUBCHAPTER D. REGULATION OF FACILITIES

Sec. 254.151. **MINIMUM STANDARDS.** Requires that rules adopted under this chapter contain minimum standards applicable to a facility and for the construction and design of the facility, including plumbing, heating, lighting, ventilation, and other design standards necessary to ensure the health and safety of patients; the number, qualifications, and organization of the professional staff and other personnel; the administration of the facility; the equipment essential to the health and welfare of the patients; the sanitary and hygienic conditions within the facility and its surroundings; the contents, maintenance, and release of medical records; the minimal level of care and standards for denial of care; the provision of laboratory and radiological services; the distribution and administration of drugs and controlled substances; a quality assurance program for patient care; and transfer protocols for patients requiring advanced medical care at a hospital.

Sec. 254.152. **FACILITIES NOT IN CONTINUOUS OPERATION.** (a) Requires a facility that is not in continuous operation to display a clearly visible sign that indicates whether the facility is open or closed, provides information regarding the facility's operating hours, and provides clear instructions directing a patient to an emergency room in a licensed hospital or a freestanding emergency room classified as a facility that is in continuous operation within 10 miles of the facility that is not in continuous operation.

(b) Prohibits a facility that is not in continuous operation from advertising, marketing, or otherwise promoting the services provided by the facility using the term "emergency" or any similar term defined by DSHS rule.

(c) Provides that notwithstanding Subsection (b), a facility that is not in continuous operation is not required to comply with Subsection (b) until the earlier of the second anniversary of the date the facility is issued a license under this chapter or September 1, 2012. Provides that this subsection expires January 1, 2013.

(d) Provides that this section expires August 31, 2013.

Sec. 254.153. **FACILITY CARE REQUIREMENTS.** (a) Requires a facility to provide to each facility patient, without regard to the individual's ability to pay, an appropriate medical screening examination within the facility's capacity, including ancillary services routinely available to the facility, to determine whether an emergency medical condition exists.

(b) Requires the facility, before a facility accepts any patient for treatment or diagnosis, to enter into a referral, transmission, or admission agreement with a hospital licensed in this state that has an emergency room.

[Reserves Sections 254.154-254.200 for expansion.]

SUBCHAPTER E. ENFORCEMENT AND PENALTIES

Sec. 254.201. **DENIAL, SUSPENSION, PROBATION, OR REVOCATION OF LICENSE.** (a) Authorizes DSHS to deny, suspend, or revoke a license for a violation of this chapter or a rule adopted under this chapter.

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

(c) Authorizes DSHS, if DSHS 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, to schedule the facility for probation rather than suspending or revoking the facility's license. Requires DSHS to provide notice to the facility of the probation and the items of noncompliance not later than the 10th day before the date the probation period begins. Requires

DSHS to designate a period of not less than 30 days during which the facility remains under probation. Requires the facility, during the probation period, to correct the items that were in noncompliance and report the corrections to DSHS for approval.

(d) Authorizes DSHS to 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. 254.202. EMERGENCY SUSPENSION. (a) Authorizes DSHS to issue an emergency order to suspend a license issued under this chapter if DSHS has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety.

(b) Provides that an emergency suspension under this section is effective immediately without a hearing on notice to the license holder.

(c) Requires DSHS, on written request of the license holder, to conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded.

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

Sec. 254.203. INJUNCTION. (a) Authorizes DSHS to 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 DSHS finds that the violation creates an immediate threat to the health and safety of the patients of a facility.

(b) Authorizes a district court, on petition of DSHS and on a finding by the court that a person is violating the standards or licensing requirements provided under this chapter, to by injunction prohibit a person from continuing a violation of the standards or licensing requirements provided under this chapter, restrain or prevent the establishment or operation of a facility without a license issued under this chapter, or grant any other injunctive relief warranted by the facts.

(c) Requires the attorney general to institute and conduct a suit authorized by this section at the request of DSHS.

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

Sec. 254.204. CRIMINAL PENALTY. (a) Provides that a person commits an offense if the person violates Section 254.051.

(b) Provides that an offense under this section is a Class C misdemeanor.

(c) Provides that each day of a continuing violation constitutes a separate offense.

Sec. 254.205. IMPOSITION OF ADMINISTRATIVE PENALTY. (a) Authorizes DSHS to impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter. Requires that a penalty collected under this section or Section 254.206 be deposited in the state treasury in the general revenue fund.

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

(c) Prohibits the amount of the penalty from exceeding \$1,000 for each violation, and provides that each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. Prohibits the total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection from exceeding \$5,000.

(d) Requires the amount to be based on the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation; the threat to health or safety caused by the violation; the history of previous violations; the amount necessary to deter a future violation; whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and any other matter that justice may require.

(e) Requires DSHS, if DSHS initially determines that a violation occurred, to give written notice of the report by certified mail to the person.

(f) Requires that the notice under Subsection (e) include a brief summary of the alleged violation; state the amount of the recommended penalty; and 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) Authorizes the person, within 20 days after the date the person receives the notice under Subsection (e), to accept in writing the determination and recommended penalty of DSHS or make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

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

(i) Requires the commissioner, if the person requests a hearing, to refer the matter to the State Office of Administrative Hearings (SOAH), which is required to promptly set a hearing date and give written notice of the time and place of the hearing to the person. Requires an administrative law judge of SOAH to conduct the hearing.

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

(k) Authorizes the commissioner, based on the findings of fact, conclusions of law, and proposal for a decision, by order to find that a violation occurred and impose a penalty or find that a violation did not occur.

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

Sec. 254.206. PAYMENT AND COLLECTION OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW. (a) Requires the person, within 30 days after the date an order of the commissioner under Section 254.205(k) that imposes an administrative penalty becomes final, to pay the penalty or 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) Authorizes a person who files a petition for judicial review, within the 30-day period prescribed by Subsection (a), to:

(1) stay enforcement of the penalty by paying the penalty to the court for placement in an escrow account or giving the court a supersedeas bond

approved by the court that is for the amount of the penalty and 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 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 sending a copy of the affidavit to the executive commissioner by certified mail.

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

(d) Authorizes the penalty to be collected if the person does not pay the penalty and the enforcement of the penalty is not stayed. Authorizes the attorney general to sue to collect the penalty.

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

(f) Requires the court to order that a penalty is not owed if the court does not sustain the finding that a violation occurred.

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

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

SECTION 2. Amends Section 843.002, Insurance Code, by amending Subdivision (7) and adding Subdivision (9-a), to redefine "emergency care" and define "freestanding emergency medical care facility."

SECTION 3. Amends Section 1271.155(b), Insurance Code, to require a health care plan of a health maintenance organization (HMO) to provide certain coverage of emergency care, including services originated in a hospital emergency facility, freestanding emergency medical care facility, or comparable emergency facility following treatment or stabilization of an emergency medical condition are required to be provided to covered enrollees as approved by the HMO, subject to Subsections (c) (relating to requiring an HMO to approve or deny coverage of poststabilization care as requested by a treating physician or provider within a certain time) and (d) (relating to requiring an HMO to respond to inquires from a treating physician or provider).

SECTION 4. Amends Section 1301.001, Insurance Code, by adding Subdivision (12), to define "freestanding emergency medical care facility."

SECTION 5. Amends Section 1301.155, Insurance Code, to redefine "emergency care."

SECTION 6. (a) Requires a freestanding emergency medical care facility, not later than September 1, 2010, to obtain a license as required by Chapter 254, Health and Safety Code, as added by this Act.

(b) Requires the executive commissioner, not later than March 1, 2010, to adopt rules as required by Chapter 254, Health and Safety Code, as added by this Act.

(c) Makes application of the changes in law made by Sections 3, 4, and 5 of this Act prospective.

(d) Prohibits DSHS from issuing a license under Section 254.051(f), Health and Safety Code, with a license term that extends beyond August 31, 2013.

SECTION 7. (a) Effective date, except as provided by Subsections (b) and (c) of this section: September 1, 2009.

(b) Effective date, Sections 254.201-254.203, 254.205, and 254.206, Health and Safety Code, as added by this Act, and Sections 843.002, 1271.155, 1301.001, and 1301.155, Insurance Code, as amended by this Act: March 1, 2010.

(c) Effective date, Section 254.204, Health and Safety Code, as added by this Act: September 1, 2010.