

By: Isett, Rios Ybarra, Laubenberg, et al.

H.B. No. 1357

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the regulation of freestanding emergency medical care  
3 facilities; providing an administrative penalty; creating an  
4 offense.

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

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

8 CHAPTER 254. FREESTANDING EMERGENCY MEDICAL CARE FACILITIES

9 SUBCHAPTER A. GENERAL PROVISIONS

10 Sec. 254.001. DEFINITIONS. In this chapter:

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

13 (2) "Emergency care" has the meaning assigned by  
14 Section 843.002, Insurance Code.

15 (3) "Executive commissioner" means the executive  
16 commissioner of the Health and Human Services Commission.

17 (4) "Facility" means a freestanding emergency medical  
18 care facility.

19 (5) "Freestanding emergency medical care facility"  
20 means a facility, structurally separate and distinct from a  
21 hospital and not affiliated with a hospital licensed under Chapter  
22 241, that receives an individual and provides medical treatment or  
23 stabilization to the individual in an emergency or for a condition  
24 that requires immediate medical care.

1           [Sections 254.002-254.050 reserved for expansion]

2                           SUBCHAPTER B. LICENSING

3           Sec. 254.051. LICENSE REQUIRED. (a) Except as provided by  
4 Section 254.052, a person may not establish or operate a  
5 freestanding emergency medical care facility in this state without  
6 a license issued under this chapter.

7           (b) Except as provided by Section 254.052, a facility or  
8 person may not hold itself out to the public as an emergency medical  
9 facility or use any similar term defined by department rule that  
10 would give the impression that the facility or person is providing  
11 emergency medical care treatment unless the facility or person  
12 holds a license issued under this chapter. The use of the term  
13 "emergency" or a similar term is also subject to Section 254.152.

14           (c) Each facility must have a separate license.

15           (d) A license issued under this chapter is not transferable  
16 or assignable.

17           (e) The executive commissioner by rule shall establish a  
18 classification and license for a facility that is in continuous  
19 operation 24 hours per day and 7 days per week.

20           (f) The executive commissioner by rule shall establish a  
21 classification and license for a facility that is not in continuous  
22 operation 24 hours per day and 7 days per week. The minimum  
23 operating hours of a facility licensed under this subsection may  
24 not be less than 7 days each week and may not be less than 12 hours  
25 each day. This subsection and any rules adopted by the executive  
26 commissioner under this subsection expire August 31, 2013.

27           Sec. 254.052. EXEMPTIONS FROM LICENSING REQUIREMENT. The

1 following facilities are not required to be licensed under this  
2 chapter:

3 (1) an office or clinic owned and operated by a  
4 manufacturing facility solely for the purposes of treating its  
5 employees and contractors;

6 (2) temporary emergency clinics in disaster areas;

7 (3) an office or clinic of a licensed physician,  
8 dentist, optometrist, or podiatrist;

9 (4) a licensed nursing home;

10 (5) a licensed hospital; or

11 (6) a licensed ambulatory surgical center.

12 Sec. 254.053. LICENSE APPLICATION AND ISSUANCE. (a) An  
13 applicant for a license under this chapter must submit an  
14 application to the department on a form prescribed by the  
15 department.

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

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

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

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

27 [Sections 254.054-254.100 reserved for expansion]

1 SUBCHAPTER C. EXECUTIVE COMMISSIONER AND DEPARTMENT POWERS AND  
2 DUTIES

3 Sec. 254.101. ADOPTION OF RULES. The executive  
4 commissioner shall adopt rules necessary to implement this chapter,  
5 including requirements for the issuance, renewal, denial,  
6 suspension, and revocation of a license to operate a facility.

7 Sec. 254.102. FEES. The executive commissioner shall set  
8 fees imposed by this chapter in amounts reasonable and necessary to  
9 defray the cost of administering this chapter.

10 Sec. 254.103. INSPECTIONS. The department may inspect a  
11 facility at reasonable times as necessary to ensure compliance with  
12 this chapter.

13 Sec. 254.104. FREESTANDING EMERGENCY MEDICAL CARE FACILITY  
14 LICENSING FUND. All fees collected under this chapter shall be  
15 deposited in the state treasury to the credit of the freestanding  
16 emergency medical care facility licensing fund and may be  
17 appropriated to the department only to administer and enforce this  
18 chapter.

19 [Sections 254.105-254.150 reserved for expansion]

20 SUBCHAPTER D. REGULATION OF FACILITIES

21 Sec. 254.151. MINIMUM STANDARDS. Rules adopted under this  
22 chapter must contain minimum standards applicable to a facility and  
23 for:

24 (1) the construction and design of the facility,  
25 including plumbing, heating, lighting, ventilation, and other  
26 design standards necessary to ensure the health and safety of  
27 patients;

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

3           (3) the administration of the facility;

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

6           (5) the sanitary and hygienic conditions within the  
7 facility and its surroundings;

8           (6) the contents, maintenance, and release of medical  
9 records;

10           (7) the minimal level of care and standards for denial  
11 of care;

12           (8) the provision of laboratory and radiological  
13 services;

14           (9) the distribution and administration of drugs and  
15 controlled substances;

16           (10) a quality assurance program for patient care; and

17           (11) transfer protocols for patients requiring  
18 advanced medical care at a hospital.

19           Sec. 254.152. FACILITIES NOT IN CONTINUOUS OPERATION. (a) A  
20 facility that is not in continuous operation shall display a  
21 clearly visible sign that:

22           (1) indicates whether the facility is open or closed;

23           (2) provides information regarding the facility's  
24 operating hours; and

25           (3) provides clear instructions directing a patient to  
26 an emergency room in a licensed hospital or a freestanding  
27 emergency room classified as a facility that is in continuous

1 operation within 10 miles of the facility that is not in continuous  
2 operation.

3 (b) A facility that is not in continuous operation may not  
4 advertise, market, or otherwise promote the services provided by  
5 the facility using the term "emergency" or any similar term defined  
6 by department rule.

7 (c) Notwithstanding Subsection (b), a facility that is not  
8 in continuous operation is not required to comply with Subsection  
9 (b) until the earlier of the second anniversary of the date the  
10 facility is issued a license under this chapter or September 1,  
11 2012. This subsection expires January 1, 2013.

12 (d) This section expires August 31, 2013.

13 Sec. 254.153. FACILITY CARE REQUIREMENTS. (a) A facility  
14 shall provide to each facility patient, without regard to the  
15 individual's ability to pay, an appropriate medical screening  
16 examination within the facility's capability, including ancillary  
17 services routinely available to the facility, to determine whether  
18 an emergency medical condition exists.

19 (b) Before a facility accepts any patient for treatment or  
20 diagnosis, the facility shall enter into a referral, transmission,  
21 or admission agreement with a hospital licensed in this state that  
22 has an emergency room.

23 [Sections 254.154-254.200 reserved for expansion]

24 SUBCHAPTER E. ENFORCEMENT AND PENALTIES

25 Sec. 254.201. DENIAL, SUSPENSION, PROBATION, OR REVOCATION  
26 OF LICENSE. (a) The department may deny, suspend, or revoke a  
27 license for a violation of this chapter or a rule adopted under this

1 chapter.

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

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

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

22 Sec. 254.202. EMERGENCY SUSPENSION. (a) The department  
23 may issue an emergency order to suspend a license issued under this  
24 chapter if the department has reasonable cause to believe that the  
25 conduct of a license holder creates an immediate danger to the  
26 public health and safety.

27 (b) An emergency suspension under this section is effective

1 immediately without a hearing on notice to the license holder.

2 (c) On written request of the license holder, the department  
3 shall conduct a hearing not earlier than the 10th day or later than  
4 the 30th day after the date the hearing request is received to  
5 determine if the emergency suspension is to be continued, modified,  
6 or rescinded.

7 (d) A hearing and any appeal under this section are governed  
8 by the department's rules for a contested case hearing and Chapter  
9 2001, Government Code.

10 Sec. 254.203. INJUNCTION. (a) The department may petition  
11 a district court for a temporary restraining order to restrain a  
12 continuing violation of the standards or licensing requirements  
13 provided under this chapter if the department finds that the  
14 violation creates an immediate threat to the health and safety of  
15 the patients of a facility.

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

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

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

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

27 (c) The attorney general shall institute and conduct a suit



1 authorized by this section at the request of the department.

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

4 Sec. 254.204. CRIMINAL PENALTY. (a) A person commits an  
5 offense if the person violates Section 254.051.

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

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

9 Sec. 254.205. IMPOSITION OF ADMINISTRATIVE PENALTY. (a)  
10 The department may impose an administrative penalty on a person  
11 licensed under this chapter who violates this chapter or a rule or  
12 order adopted under this chapter. A penalty collected under this  
13 section or Section 254.206 shall be deposited in the state treasury  
14 in the general revenue fund.

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

17 (c) The amount of the penalty may not exceed \$1,000 for each  
18 violation, and each day a violation continues or occurs is a  
19 separate violation for purposes of imposing a penalty. The total  
20 amount of the penalty assessed for a violation continuing or  
21 occurring on separate days under this subsection may not exceed  
22 \$5,000.

23 (d) The amount shall be based on:

24 (1) the seriousness of the violation, including the  
25 nature, circumstances, extent, and gravity of the violation;

26 (2) the threat to health or safety caused by the  
27 violation;

1           (3) the history of previous violations;

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

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

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

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

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

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

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

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

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

18           (1) accept the determination and recommended penalty  
19 of the department; or

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

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

26          (i) If the person requests a hearing, the commissioner of  
27 state health services shall refer the matter to the State Office of

1 Administrative Hearings, which shall promptly set a hearing date  
2 and give written notice of the time and place of the hearing to the  
3 person. An administrative law judge of the State Office of  
4 Administrative Hearings shall conduct the hearing.

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

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

12 (1) find that a violation occurred and impose a  
13 penalty; or

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

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

19 Sec. 254.206. PAYMENT AND COLLECTION OF ADMINISTRATIVE  
20 PENALTY; JUDICIAL REVIEW. (a) Within 30 days after the date an  
21 order of the commissioner of state health services under Section  
22 254.205(k) that imposes an administrative penalty becomes final,  
23 the person shall:

24 (1) pay the penalty; or

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

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

3           (1) stay enforcement of the penalty by:

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

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

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

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

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

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

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

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

27       (d) If the person does not pay the penalty and the

1 enforcement of the penalty is not stayed, the penalty may be  
2 collected. The attorney general may sue to collect the penalty.

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

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

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

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

25 SECTION 2. Section 843.002, Insurance Code, is amended by  
26 amending Subdivision (7) and adding Subdivision (9-a) to read as  
27 follows:

1           (7) "Emergency care" means health care services  
2 provided in a hospital emergency facility, freestanding emergency  
3 medical care facility, or comparable emergency facility to evaluate  
4 and stabilize medical conditions of a recent onset and severity,  
5 including severe pain, that would lead a prudent layperson  
6 possessing an average knowledge of medicine and health to believe  
7 that the individual's condition, sickness, or injury is of such a  
8 nature that failure to get immediate medical care could:

9           (A) place the individual's health in serious  
10 jeopardy;

11           (B) result in serious impairment to bodily  
12 functions;

13           (C) result in serious dysfunction of a bodily  
14 organ or part;

15           (D) result in serious disfigurement; or

16           (E) for a pregnant woman, result in serious  
17 jeopardy to the health of the fetus.

18           (9-a) "Freestanding emergency medical care facility"  
19 means a facility licensed under Chapter 254, Health and Safety  
20 Code.

21           SECTION 3. Section 1271.155(b), Insurance Code, is amended  
22 to read as follows:

23           (b) A health care plan of a health maintenance organization  
24 must provide the following coverage of emergency care:

25           (1) a medical screening examination or other  
26 evaluation required by state or federal law necessary to determine  
27 whether an emergency medical condition exists shall be provided to

1 covered enrollees in a hospital emergency facility or comparable  
2 facility;

3 (2) necessary emergency care shall be provided to  
4 covered enrollees, including the treatment and stabilization of an  
5 emergency medical condition; and

6 (3) services originated in a hospital emergency  
7 facility, freestanding emergency medical care facility, or  
8 comparable emergency facility following treatment or stabilization  
9 of an emergency medical condition shall be provided to covered  
10 enrollees as approved by the health maintenance organization,  
11 subject to Subsections (c) and (d).

12 SECTION 4. Section 1301.001, Insurance Code, is amended by  
13 adding Subdivision (12) to read as follows:

14 (12) "Freestanding emergency medical care facility"  
15 means a facility licensed under Chapter 254, Health and Safety  
16 Code.

17 SECTION 5. Section 1301.155, Insurance Code, is amended to  
18 read as follows:

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

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

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

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

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

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

21 SECTION 6. (a) Not later than September 1, 2010, a  
22 freestanding emergency medical care facility must obtain a license  
23 as required by Chapter 254, Health and Safety Code, as added by this  
24 Act.

25 (b) Not later than March 1, 2010, the executive commissioner  
26 of the Health and Human Services Commission shall adopt rules as  
27 required by Chapter 254, Health and Safety Code, as added by this



1 Act.

2 (c) The changes in law made by Sections 3, 4, and 5 of this  
3 Act apply only to a health insurance policy or evidence of coverage  
4 delivered, issued for delivery, or renewed on or after March 1,  
5 2010. A health insurance policy or evidence of coverage delivered,  
6 issued for delivery, or renewed before that date is governed by the  
7 law in effect immediately before that date, and that law is  
8 continued in effect for that purpose.

9 (d) The Department of State Health Services may not issue a  
10 license under Section 254.051(f), Health and Safety Code, with a  
11 license term that extends beyond August 31, 2013.

12 SECTION 7. (a) Except as provided by Subsections (b) and  
13 (c) of this section, this Act takes effect September 1, 2009.

14 (b) Sections 254.201, 254.202, 254.203, 254.205, and  
15 254.206, Health and Safety Code, as added by this Act, and Sections  
16 843.002, 1271.155, 1301.001, and 1301.155, Insurance Code, as  
17 amended by this Act, take effect March 1, 2010.

18 (c) Section 254.204, Health and Safety Code, as added by  
19 this Act, takes effect September 1, 2010.