

1 AN ACT

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 Sections 843.002 and 1301.155, 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 that receives an individual and provides emergency care,
22 as defined by Subsection (2).

23 [Section 254.002-254.050 reserved for expansion]

SUBCHAPTER B. LICENSING

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

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

13 (c) Each separate facility location must have a separate
14 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 for a facility that is in continuous operation 24
19 hours per day and 7 days per week and a classification for a
20 facility that is in operation 7 days per week and at least 12 hours
21 per day.

22 (f) A facility that is not in continuous operation 24 hours
23 per day and 7 days per week cannot be issued a license with a term
24 that extends beyond August 31, 2013.

25 Sec. 254.052. EXEMPTIONS FROM LICENSING REQUIREMENT. The
26 following facilities are not required to be licensed under this
27 chapter.

1 chapter:

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

5 (2) temporary emergency clinics in disaster areas;

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

8 (4) a licensed nursing home;

9 (5) a licensed hospital;

10 (6) a hospital that is owned and operated by this
11 state;

12 (7) a facility located within or connected to a
13 hospital described by Subsection (5) or (6);

14 (8) a facility that is owned or operated by a hospital
15 described by Subsection (5) or (6) and is:

16 (A) surveyed as a service of the hospital by an
17 organization that has been granted deeming authority as a national
18 accreditation program for hospitals by the Centers for Medicare and
19 Medicaid Services; or

20 (B) granted provider-based status by the Centers
21 for Medicare and Medicaid Services; or

22 (9) a licensed ambulatory surgical center.

23 Sec. 254.053. LICENSE APPLICATION AND ISSUANCE. (a) An
24 applicant for a license under this chapter must submit an
25 application to the department on a form prescribed by the
26 department.

27 (b) Each application must be accompanied by a nonrefundable

1 license fee in an amount set by the executive commissioner.

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

5 (d) The application must contain evidence that the facility
6 meets the minimum standards and requirements specified in Section
7 254.151.

8 (e) The department shall issue a license if, after
9 inspection and investigation, it finds that the applicant and the
10 facility meet the requirements of this chapter and the standards
11 adopted under this chapter.

12 (f) The license fee must be paid annually on renewal of the
13 license.

14 [Sections 254.054-254.100 reserved for expansion]

15 SUBCHAPTER C. EXECUTIVE COMMISSIONER AND DEPARTMENT POWERS AND
16 DUTIES

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

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

24 Sec. 254.103. INSPECTIONS. The department may inspect a
25 facility at reasonable times as necessary to ensure compliance with
26 this chapter.

27 Sec. 254.104. FREESTANDING EMERGENCY MEDICAL CARE FACILITY

1 LICENSING FUND. All fees collected under this chapter shall be
2 deposited in the state treasury to the credit of the freestanding
3 emergency medical care facility licensing fund and may be
4 appropriated to the department only to administer and enforce this
5 chapter.

6 [Sections 254.105-254.150 reserved for expansion]

7 SUBCHAPTER D. REGULATION OF FACILITIES

8 Sec. 254.151. MINIMUM STANDARDS. (a) The executive
9 commissioner shall adopt rules necessary to implement this chapter,
10 including minimum standards for:

11 (1) the construction and design of the facility,
12 including plumbing, heating, lighting, ventilation, and other
13 design standards necessary to ensure the health and safety of
14 patients;

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

17 (3) the administration of the facility;

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

20 (5) the sanitary and hygienic conditions within the
21 facility and its surroundings;

22 (6) the requirements for the contents, maintenance,
23 and release of medical records;

24 (7) the minimal level of care and standards for denial
25 of care;

26 (8) the provision of laboratory and radiological
27 services;

1 (9) the distribution and administration of drugs and
2 controlled substances;

3 (10) a quality assurance program for patient care;

4 (11) disclosure, if applicable, of the following:

5 (A) the name and social security number of the
6 sole proprietor, if the facility is a sole proprietor;

7 (B) the name and social security number of each
8 general partner who is an individual, if the facility is a
9 partnership;

10 (C) the name and social security number of any
11 individual who has an ownership interest of more than 25 percent in
12 the corporation, if the facility is a corporation; and

13 (D) the name and license numbers of any
14 physicians licensed by the Texas Medical Board who have a financial
15 interest in the facility or any entity which has an ownership
16 interest in the facility;

17 (12) transfer protocols for patients requiring
18 advanced medical care at a hospital; and

19 (13) any other aspect of the operation of a facility
20 that the executive commissioner considers necessary to protect the
21 facility's patients and the public.

22 (b) In adopting the rules required under Subsection (a)
23 concerning transfer protocols, the executive commissioner must
24 consult with physicians who provide emergency care, medical
25 consultant organizations, and organizations representing hospitals
26 licensed in this state.

27 (c) The minimum standards under this section shall apply to

1 facilities operating 24 hours a day and 7 days per week and
2 facilities operating less than 24 hours a day and 7 days per week.

3 Sec. 254.152. FACILITIES NOT IN CONTINUOUS OPERATION.

4 (a) A facility that is not in continuous operation shall display a
5 clearly visible sign that:

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

7 (2) provides information regarding the facility's
8 operating hours; and

9 (3) provides clear instructions directing a patient to
10 an emergency room in a licensed hospital or a freestanding
11 emergency room classified as a facility that is in continuous
12 operation within 10 miles of the facility that is not in continuous
13 operation.

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

18 (c) Notwithstanding Subsection (b), a facility that is not
19 in continuous operation is not required to comply with Subsection
20 (b) until the earlier of the second anniversary of the date the
21 facility is issued a license under this chapter or September 1,
22 2012. This subsection expires January 1, 2013.

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

24 Sec. 254.153. FACILITY CARE REQUIREMENTS. (a) A facility
25 shall provide to each facility patient, without regard to the
26 individual's ability to pay, an appropriate medical screening,
27 examination, and stabilization within the facility's capability,

1 including ancillary services routinely available to the facility,
2 to determine whether an emergency medical condition exists and any
3 necessary stabilizing treatment.

4 (b) Before a facility accepts any patient for treatment or
5 diagnosis, the facility shall enter into a referral, transmission,
6 or admission agreement with a hospital licensed in this state.

7 Sec. 254.154. COMPLAINTS. A person may file a complaint
8 with the department against a facility licensed under this chapter.

9 [Sections 254.155-254.200 reserved for expansion]

10 SUBCHAPTER E. ENFORCEMENT AND PENALTIES

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

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

19 (c) If the department finds that a facility is in repeated
20 noncompliance with this chapter or rules adopted under this chapter
21 but that the noncompliance does not endanger public health and
22 safety, the department may schedule the facility for probation
23 rather than suspending or revoking the facility's license. The
24 department shall provide notice to the facility of the probation
25 and of the items of noncompliance not later than the 10th day before
26 the date the probation period begins. The department shall
27 designate a period of not less than 30 days during which the

1 facility remains under probation. During the probation period, the
2 facility must correct the items that were in noncompliance and
3 report the corrections to the department for approval.

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

8 Sec. 254.202. EMERGENCY SUSPENSION. (a) The department
9 may issue an emergency order to suspend a license issued under this
10 chapter if the department has reasonable cause to believe that the
11 conduct of a license holder creates an immediate danger to the
12 public health and safety.

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

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

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

23 Sec. 254.203. INJUNCTION. (a) The department may petition
24 a district court for a temporary restraining order to restrain a
25 continuing violation of the standards or licensing requirements
26 provided under this chapter if the department finds that the
27 violation creates an immediate threat to the health and safety of

1 the patients of a facility.

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

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

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

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

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

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

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

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

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

22 Sec. 254.205. IMPOSITION OF ADMINISTRATIVE PENALTY.

23 (a) The department may impose an administrative penalty on a
24 person licensed under this chapter who violates this chapter or a
25 rule or order adopted under this chapter. A penalty collected under
26 this section or Section 254.206 shall be deposited in the state
27 treasury in the general revenue fund.

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

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

9 (d) The amount shall be based on:

10 (1) the seriousness of the violation, including the
11 nature, circumstances, extent, and gravity of the violation;

12 (2) the threat to health or safety caused by the
13 violation;

14 (3) the history of previous violations;

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

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

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

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

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

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

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

26 (3) inform the person of the person's right to a
27 hearing on the occurrence of the violation, the amount of the

1 penalty, or both.

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

4 (1) accept the determination and recommended penalty
5 of the department; or

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

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

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

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

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

25 (1) find that a violation occurred and impose a
26 penalty; or

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

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

5 Sec. 254.206. PAYMENT AND COLLECTION OF ADMINISTRATIVE
6 PENALTY; JUDICIAL REVIEW. (a) Within 30 days after the date an
7 order of the commissioner of state health services under Section
8 254.205(k) that imposes an administrative penalty becomes final,
9 the person shall:

10 (1) pay the penalty; or

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

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

16 (1) stay enforcement of the penalty by:

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

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

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

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

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

26 (A) filing with the court a sworn affidavit of
27 the person stating that the person is financially unable to pay the

1 penalty and is financially unable to give the supersedeas bond; and

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

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

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

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

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

23 (g) If the person paid the penalty and if the amount of the
24 penalty is reduced or the penalty is not upheld by the court, the
25 court shall order, when the court's judgment becomes final, that
26 the appropriate amount plus accrued interest be remitted to the
27 person within 30 days after the date that the judgement of the court

1 becomes final. The interest accrues at the rate charged on loans to
2 depository institutions by the New York Federal Reserve Bank. The
3 interest shall be paid for the period beginning on the date the
4 penalty is paid and ending on the date the penalty is remitted.

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

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

14 (7) "Emergency care" means health care services
15 provided in a hospital emergency facility, freestanding emergency
16 medical care facility, or comparable emergency facility to evaluate
17 and stabilize medical conditions of a recent onset and severity,
18 including severe pain, that would lead a prudent layperson
19 possessing an average knowledge of medicine and health to believe
20 that the individual's condition, sickness, or injury is of such a
21 nature that failure to get immediate medical care could:

22 (A) place the individual's health in serious
23 jeopardy;

24 (B) result in serious impairment to bodily
25 functions;

26 (C) result in serious dysfunction of a bodily
27 organ or part;

1 (D) result in serious disfigurement; or

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

4 (9-a) "Freestanding emergency medical care facility"
5 means a facility licensed under Chapter 254, Health and Safety
6 Code.

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

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

11 (1) a medical screening examination or other
12 evaluation required by state or federal law necessary to determine
13 whether an emergency medical condition exists shall be provided to
14 covered enrollees in a hospital emergency facility or comparable
15 facility;

16 (2) necessary emergency care shall be provided to
17 covered enrollees, including the treatment and stabilization of an
18 emergency medical condition; and

19 (3) services originated in a hospital emergency
20 facility, freestanding emergency medical care facility, or
21 comparable emergency facility following treatment or stabilization
22 of an emergency medical condition shall be provided to covered
23 enrollees as approved by the health maintenance organization,
24 subject to Subsections (c) and (d).

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

27 (12) "Freestanding emergency medical care facility"

1 means a facility licensed under Chapter 254, Health and Safety
2 Code.

3 SECTION 5. Section 1301.155, Insurance Code, is amended to
4 read as follows:

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

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

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

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

1 whether a medical emergency condition exists;

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

4 (3) services originating in a hospital emergency
5 facility or freestanding emergency medical care facility
6 following treatment or stabilization of an emergency medical
7 condition.

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

12 (b) Not later than March 1, 2010, the executive commissioner
13 of the Health and Human Services Commission shall adopt rules as
14 required by Chapter 254, Health and Safety Code, as added by this
15 Act.

16 (c) The changes in law made by Sections 3, 4, and 5 of this
17 Act apply only to a health insurance policy or evidence of coverage
18 delivered, issued for delivery, or renewed on or after March 1,
19 2010. A health insurance policy or evidence of coverage delivered,
20 issued for delivery, or renewed before that date is governed by the
21 law in effect immediately before that date, and that law is
22 continued in effect for that purpose.

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

25 (b) Sections 254.201, 254.202, 254.203, 254.205, and
26 254.206, Health and Safety Code, as added by this Act, and Sections
27 843.002, 1271.155, 1301.001, and 1301.155, Insurance Code, as

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1 amended by this Act, take effect March 1, 2010.

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

President of the Senate

Speaker of the House

I certify that H.B. No. 1357 was passed by the House on May 11, 2009, by the following vote: Yeas 145, Nays 0, 2 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 1357 on May 29, 2009, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1357 on May 31, 2009, by the following vote: Yeas 141, Nays 0, 1 present, not voting.

Chief Clerk of the House

H.B. No. 1357

I certify that H.B. No. 1357 was passed by the Senate, with amendments, on May 26, 2009, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1357 on May 31, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor