

By: Isett

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 Sec. 254.001. DEFINITIONS. In this chapter:

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

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

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

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

18 (5) "Freestanding emergency medical care facility"
19 means a facility, structurally separate and distinct from a
20 hospital and not affiliated with a hospital licensed under Chapter
21 241, that provides limited emergency care and limited services for
22 the treatment of a medical emergency.

23 Sec. 254.002. LICENSE REQUIRED. (a) Except as provided by
24 Section 254.003, a person may not establish or operate a

1 freestanding emergency medical care facility in this state without
2 a license issued under this chapter.

3 (b) Each facility must have a separate license.

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

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

9 (1) an office or clinic of a licensed physician,
10 dentist, or podiatrist;

11 (2) a licensed nursing home;

12 (3) a licensed hospital; or

13 (4) a licensed ambulatory surgical center.

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

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

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

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

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

1 license.

2 Sec. 254.005. INSPECTIONS. The department may inspect a
3 facility at reasonable times as necessary to ensure compliance with
4 this chapter.

5 Sec. 254.006. FEES. The executive commissioner shall set
6 fees imposed by this chapter in amounts reasonable and necessary to
7 defray the cost of administering this chapter.

8 Sec. 254.007. FREESTANDING EMERGENCY MEDICAL CARE FACILITY
9 LICENSING FUND. All fees collected under this chapter shall be
10 deposited in the state treasury to the credit of the freestanding
11 emergency medical care facility licensing fund and may be
12 appropriated to the department only to administer and enforce this
13 chapter.

14 Sec. 254.008. ADOPTION OF RULES. The executive
15 commissioner shall adopt rules necessary to implement this chapter,
16 including requirements for the issuance, renewal, denial,
17 suspension, and revocation of a license to operate a facility.

18 Sec. 254.009. MINIMUM STANDARDS. Rules adopted under this
19 chapter must contain minimum standards applicable to a facility and
20 for:

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

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

27 (3) the administration of the facility;

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

3 (5) the sanitary and hygienic conditions within the
4 facility and its surroundings;

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

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

9 (8) the provision of laboratory and radiological
10 services;

11 (9) the distribution and administration of drugs and
12 controlled substances; and

13 (10) a quality assurance program for patient care.

14 Sec. 254.010. DENIAL, SUSPENSION, PROBATION, OR REVOCATION
15 OF LICENSE. (a) The department may deny, suspend, or revoke a
16 license for a violation of this chapter or a rule adopted under this
17 chapter.

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

22 (c) If the department finds that a facility is in repeated
23 noncompliance with this chapter or rules adopted under this chapter
24 but that the noncompliance does not endanger public health and
25 safety, the department may schedule the facility for probation
26 rather than suspending or revoking the facility's license. The
27 department shall provide notice to the facility of the probation

1 and of the items of noncompliance not later than the 10th day before
2 the date the probation period begins. The department shall
3 designate a period of not less than 30 days during which the
4 facility remains under probation. During the probation period, the
5 facility must correct the items that were in noncompliance and
6 report the corrections to the department for approval.

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

11 Sec. 254.011. EMERGENCY SUSPENSION. (a) The department
12 may issue an emergency order to suspend a license issued under this
13 chapter if the department has reasonable cause to believe that the
14 conduct of a license holder creates an immediate danger to the
15 public health and safety.

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

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

23 (d) A hearing and any appeal under this section are governed
24 by the department's rules for a contested case hearing and Chapter
25 2001, Government Code.

26 Sec. 254.012. INJUNCTION. (a) The department may petition
27 a district court for a temporary restraining order to restrain a

1 continuing violation of the standards or licensing requirements
2 provided under this chapter if the department finds that the
3 violation creates an immediate threat to the health and safety of
4 the patients of a facility.

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

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

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

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

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

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

20 Sec. 254.013. CRIMINAL PENALTY. (a) A person commits an
21 offense if the person violates Section 254.002(a).

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

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

25 Sec. 254.014. IMPOSITION OF ADMINISTRATIVE PENALTY. (a)
26 The department may impose an administrative penalty on a person
27 licensed under this chapter who violates this chapter or a rule or

1 order adopted under this chapter. A penalty collected under this
2 section or Section 254.015 shall be deposited in the state treasury
3 in the general revenue fund.

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

6 (c) The amount of the penalty may not exceed \$1,000 for each
7 violation, and each day a violation continues or occurs is a
8 separate violation for purposes of imposing a penalty. The total
9 amount of the penalty assessed for a violation continuing or
10 occurring on separate days under this subsection may not exceed
11 \$5,000.

12 (d) The amount shall be based on:

13 (1) the seriousness of the violation, including the
14 nature, circumstances, extent, and gravity of the violation;

15 (2) the threat to health or safety caused by the
16 violation;

17 (3) the history of previous violations;

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

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

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

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

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

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

1 (2) state the amount of the recommended penalty; and
2 (3) inform the person of the person's right to a
3 hearing on the occurrence of the violation, the amount of the
4 penalty, or both.

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

7 (1) accept the determination and recommended penalty
8 of the department; or

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

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

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

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

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

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

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

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

8 Sec. 254.015. PAYMENT AND COLLECTION OF ADMINISTRATIVE
9 PENALTY; JUDICIAL REVIEW. (a) Within 30 days after the date an
10 order of the commissioner of state health services under Section
11 254.014(k) that imposes an administrative penalty becomes final,
12 the person shall:

13 (1) pay the penalty; or

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

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

19 (1) stay enforcement of the penalty by:

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

22 (B) giving the court a supersedeas bond approved
23 by the court that:

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

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

27 (2) request the court to stay enforcement of the

1 penalty by:

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

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

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

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

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

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

26 (g) If the person paid the penalty and if the amount of the
27 penalty is reduced or the penalty is not upheld by the court, the

1 court shall order, when the court's judgment becomes final, that
2 the appropriate amount plus accrued interest be remitted to the
3 person within 30 days after the date that the judgment of the court
4 becomes final. The interest accrues at the rate charged on loans to
5 depository institutions by the New York Federal Reserve Bank. The
6 interest shall be paid for the period beginning on the date the
7 penalty is paid and ending on the date the penalty is remitted.

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

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

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

25 (A) place the individual's health in serious
26 jeopardy;

27 (B) result in serious impairment to bodily

1 functions;

2 (C) result in serious dysfunction of a bodily
3 organ or part;

4 (D) result in serious disfigurement; or

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

7 (9-a) "Freestanding emergency medical care facility"
8 means a facility licensed under Chapter 254, Health and Safety
9 Code.

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

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

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

19 (2) necessary emergency care shall be provided to
20 covered enrollees, including the treatment and stabilization of an
21 emergency medical condition; and

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

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

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

6 SECTION 5. Section 1301.155, Insurance Code, is amended to
7 read as follows:

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

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

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

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

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

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

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

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

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

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

27 (b) Sections 254.010, 254.011, 254.012, 254.014, and

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1 254.015, Health and Safety Code, as added by this Act, and Sections
2 843.002, 1271.155, 1301.001, and 1301.155, Insurance Code, as
3 amended by this Act, take effect March 1, 2010.

4 (c) Section 254.013, Health and Safety Code, as added by
5 this Act, takes effect September 1, 2010.