

1-1 By: Isett, et al. (Senate Sponsor - Deuell) H.B. No. 1357
1-2 (In the Senate - Received from the House May 12, 2009;
1-3 May 13, 2009, read first time and referred to Committee on Health
1-4 and Human Services; May 21, 2009, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 8, Nays
1-6 0; May 21, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1357 By: Deuell

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the regulation of freestanding emergency medical care
1-11 facilities; providing an administrative penalty; creating an
1-12 offense.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1.Subtitle B, Title 4, Health and Safety Code, is
1-15 amended by adding Chapter 254 to read as follows:

1-16 CHAPTER 254. FREESTANDING EMERGENCY MEDICAL CARE FACILITIES

1-17 SUBCHAPTER A. GENERAL PROVISIONS

1-18 Sec. 254.001. DEFINITIONS. In this chapter:

1-19 (1) "Department" means the Department of State Health
1-20 Services.

1-21 (2) "Emergency care" has the meaning assigned by
1-22 Sections 843.002 and 1301.155, Insurance Code.

1-23 (3) "Executive commissioner" means the executive
1-24 commissioner of the Health and Human Services Commission.

1-25 (4) "Facility" means a freestanding emergency medical
1-26 care facility.

1-27 (5) "Freestanding emergency medical care facility"
1-28 means a facility, structurally separate and distinct from a
1-29 hospital that receives an individual and provides emergency care,
1-30 as defined by Subsection (2).

1-31 [Section 254.002-254.050 reserved for expansion]

1-32 SUBCHAPTER B. LICENSING

1-33 Sec. 254.051. LICENSE REQUIRED. (a) Excepts as provided
1-34 by Section 254.052, a person may not establish or operate a
1-35 freestanding emergency medical care facility in this state without
1-36 a license issued under this chapter.

1-37 (b) Except as provided by Section 254.052, a facility or
1-38 person may not hold itself out to the public as a freestanding
1-39 emergency medical care facility or use any similar term, as defined
1-40 by department rule, that would give the impression that the
1-41 facility or person is providing emergency care unless the facility
1-42 or person holds a license issued under this chapter. The use of the
1-43 term "emergency" or a similar term is also subject to Section
1-44 254.152.

1-45 (c) Each separate facility location must have a separate
1-46 license.

1-47 (d) A license issued under this chapter is not transferable
1-48 or assignable.

1-49 (e) The executive commissioner by rule shall establish a
1-50 classification for a facility that is in continuous operation 24
1-51 hours per day and 7 days per week and a classification for a
1-52 facility that is in operation 7 days per week and at least 12 hours
1-53 per day.

1-54 Sec. 254.052. EXEMPTIONS FROM LICENSING REQUIREMENT. The
1-55 following facilities are not required to be licensed under this
1-56 chapter:

1-57 (1) an office or clinic owned and operated by a
1-58 manufacturing facility solely for the purposes of treating its
1-59 employees and contractors;

1-60 (2) temporary emergency clinics in disaster areas;

1-61 (3) an office or clinic of a licensed physician,
1-62 dentist, optometrist, or podiatrist;

1-63 (4) a licensed nursing home;

3-1 services;
 3-2 (9) the distribution and administration of drugs and
 3-3 controlled substances;
 3-4 (10) a quality assurance program for patient care;
 3-5 (11) disclosure, if applicable, of the following:
 3-6 (A) the name and social security number of the sole
 3-7 proprietor, if the facility is a sole proprietor;
 3-8 (B) the name and social security number of each
 3-9 general partner who is an individual, if the facility is a
 3-10 partnership;
 3-11 (C) the name and social security number of any
 3-12 individual who has an ownership interest of more than 25 percent in
 3-13 the corporation, if the facility is a corporation; and
 3-14 (D) the name and license numbers of any physicians
 3-15 licensed by the Texas Medical Board who have a financial interest in
 3-16 the facility or any entity which has an ownership interest in the
 3-17 facility.
 3-18 (12) any other aspect of the operation of a facility
 3-19 that the executive commissioner considers necessary to protect the
 3-20 facility's patients and the public.
 3-21 (b) In adopting the rules required under Subsection
 3-22 (a) concerning transfer protocols, the executive commissioner must
 3-23 consult with physicians who provide emergency care, medical
 3-24 consultant organizations, and organizations representing hospitals
 3-25 licensed in this state.
 3-26 Sec. 254.152. FACILITIES NOT IN CONTINUOUS OPERATION.
 3-27 (a) A facility that is not in continuous operation shall display a
 3-28 clearly visible sign that:
 3-29 (1) indicates whether the facility is open or closed;
 3-30 (2) provides information regarding the facility's
 3-31 operating hours; and
 3-32 (3) provides clear instructions directing a patient to
 3-33 an emergency room in a licensed hospital or a freestanding
 3-34 emergency room classified as a facility that is in continuous
 3-35 operation within 10 miles of the facility that is not in continuous
 3-36 operation.
 3-37 (b) A facility that is not in continuous operation may not
 3-38 advertise, market, or otherwise promote the services provided by
 3-39 the facility using the term "emergency" or any similar term defined
 3-40 by department rule.
 3-41 (c) Notwithstanding Subsection (b), a facility that is not
 3-42 in continuous operation is not required to comply with Subsection
 3-43 (b) until the earlier of the second anniversary of the date the
 3-44 facility is issued a license under this chapter or September 1,
 3-45 2012. This subsection expires January 1, 2013.
 3-46 (d) This section expires August 31, 2013.
 3-47 Sec. 254.153. FACILITY CARE REQUIREMENTS. (a) A facility
 3-48 shall provide to each facility patient, without regard to the
 3-49 individual's ability to pay, an appropriate medical screening,
 3-50 examination, and stabilization within the facility's capability,
 3-51 including ancillary services routinely available to the facility,
 3-52 to determine whether an emergency medical condition exists and any
 3-53 necessary stabilizing treatment.
 3-54 (b) Before a facility accepts any patient for treatment or
 3-55 diagnosis, the facility shall enter into a referral, transmission,
 3-56 or admission agreement with a hospital licensed in this state.
 3-57 Sec. 254.154. COMPLAINTS. A person may file a complaint
 3-58 with the department against a facility licensed under this chapter.
 3-59 [Sections 254.155-254.200 reserved for expansion]
 3-60 SUBCHAPTER E. ENFORCEMENT AND PENALTIES
 3-61 Sec. 254.201. DENIAL, SUSPENSION, PROBATION, OR REVOCATION
 3-62 OF LICENSE. (a) The department may deny, suspend, or revoke a
 3-63 license for a violation of this chapter or a rule adopted under this
 3-64 chapter.
 3-65 (b) The denial, suspension, or revocation of a license by
 3-66 the department and the appeal from that action are governed by the
 3-67 procedures for a contested case hearing under Chapter 2001,
 3-68 Government Code.
 3-69 (c) If the department finds that a facility is in repeated

4-1 noncompliance with this chapter or rules adopted under this chapter
 4-2 but that the noncompliance does not endanger public health and
 4-3 safety, the department may schedule the facility for probation
 4-4 rather than suspending or revoking the facility's license. The
 4-5 department shall provide notice to the facility of the probation
 4-6 and of the items of noncompliance not later than the 10th day before
 4-7 the date the probation period begins. The department shall
 4-8 designate a period of not less than 30 days during which the
 4-9 facility remains under probation. During the probation period, the
 4-10 facility must correct the items that were in noncompliance and
 4-11 report the corrections to the department for approval.

4-12 (d) The department may suspend or revoke the license of a
 4-13 facility that does not correct items that were in noncompliance or
 4-14 that does not comply with this chapter or the rules adopted under
 4-15 this chapter within the applicable probation period.

4-16 Sec. 254.202. EMERGENCY SUSPENSION. (a) The department
 4-17 may issue an emergency order to suspend a license issued under this
 4-18 chapter if the department has reasonable cause to believe that the
 4-19 conduct of a license holder creates an immediate danger to the
 4-20 public health and safety.

4-21 (b) An emergency suspension under this section is effective
 4-22 immediately without a hearing on notice to the license holder.

4-23 (c) On written request of the license holder, the department
 4-24 shall conduct a hearing not earlier than the 10th day or later than
 4-25 the 30th day after the date the hearing request is received to
 4-26 determine if the emergency suspension is to be continued, modified,
 4-27 or rescinded.

4-28 (d) A hearing and any appeal under this section are governed
 4-29 by the department's rules for a contested care hearing and Chapter
 4-30 2001, Government Code.

4-31 Sec. 254.203. INJUNCTION. (a) The department may petition
 4-32 a district court for a temporary restraining order to restrain a
 4-33 continuing violation of the standards or licensing requirements
 4-34 provided under this chapter if the department finds that the
 4-35 violation creates an immediate threat to the health and safety of
 4-36 the patients of a facility.

4-37 (b) A district court, on petition of the department and on a
 4-38 finding by the court that a person is violating the standards or
 4-39 licensing requirements provided under this chapter, may by
 4-40 injunction:

4-41 (1) prohibit a person from continuing a violation of
 4-42 the standards or licensing requirements provided under this
 4-43 chapter;

4-44 (2) restrain or prevent the establishment or operation
 4-45 of a facility without a license issued under this chapter; or

4-46 (3) grant any other injunctive relief warranted by the
 4-47 facts.

4-48 (c) The attorney general shall institute and conduct a suit
 4-49 authorized by this section at the request of the department.

4-50 (d) Venue for a suit brought under this section is in the
 4-51 county in which the facility is located or in Travis County.

4-52 Sec. 254.204. CRIMINAL PENALTY. (a) A person commits an
 4-53 offense if the person violates Section 254.051.

4-54 (b) An offense under this section is a Class C misdemeanor.

4-55 (c) Each day of a continuing violation constitutes a
 4-56 separate offense.

4-57 Sec. 254.205. IMPOSITION OF ADMINISTRATIVE PENALTY.

4-58 (a) The department may impose an administrative penalty on a
 4-59 person licensed under this chapter who violates this chapter or a
 4-60 rule or order adopted under this chapter. A penalty collected under
 4-61 this section or Section 254.206 shall be deposited in the state
 4-62 treasury in the general revenue fund.

4-63 (b) A proceeding to impose the penalty is considered to be a
 4-64 contested case under Chapter 2001, Government Code.

4-65 (c) The amount of the penalty may not exceed \$1,000 for each
 4-66 violation, and each day a violation continues or occurs is a
 4-67 separate violation for purposes of imposing a penalty. The total
 4-68 amount of the penalty assessed for a violation continuing or
 4-69 occurring on separate days under this subsection may not exceed

5-1 \$5,000.

5-2 (d) The amount shall be based on:

5-3 (1) the seriousness of the violation, including the
5-4 nature, circumstances, extent, and gravity of the violation;

5-5 (2) the threat to health or safety caused by the
5-6 violation;

5-7 (3) the history of previous violations;

5-8 (4) the amount necessary to deter a future violation;

5-9 (5) whether the violator demonstrated good faith,
5-10 including when applicable whether the violator made good faith
5-11 efforts to correct the violation; and

5-12 (6) any other matter that justice may require.

5-13 (e) If the department initially determines that a violation
5-14 occurred, the department shall give written notice of the report by
5-15 certified mail to the person.

5-16 (f) The notice under Subsection (e) must:

5-17 (1) include a brief summary of the alleged violation;

5-18 (2) state the amount of the recommended penalty; and

5-19 (3) inform the person of the person's right to a
5-20 hearing on the occurrence of the violation, the amount of the
5-21 penalty, or both.

5-22 (g) Within 20 days after the date the person receives the
5-23 notice under Subsection (e), the person in writing may:

5-24 (1) accept the determination and recommended penalty
5-25 of the department; or

5-26 (2) make a request for a hearing on the occurrence of
5-27 the violation, the amount of the penalty, or both.

5-28 (h) If the person accepts the determination and recommended
5-29 penalty or if the person fails to respond to the notice, the
5-30 commissioner of state health services by order shall approve the
5-31 determination and impose the recommended penalty.

5-32 (i) If the person requests a hearing, the commissioner of
5-33 state health services shall refer the matter to the State Office of
5-34 Administrative Hearings, which shall promptly set a hearing date
5-35 and give written notice of the time and place of the hearing to the
5-36 person. An administrative law judge of the State Office of
5-37 Administrative Hearings shall conduct the hearing.

5-38 (j) The administrative law judge shall make findings of fact
5-39 and conclusions of law and promptly issue to the commissioner of
5-40 state health services a proposal for a decision about the
5-41 occurrence of the violation and the amount of a proposed penalty.

5-42 (k) Based on the findings of fact, conclusions of law, and
5-43 proposal for a decision, the commissioner of state health services
5-44 by order may:

5-45 (1) find that a violation occurred and impose a
5-46 penalty; or

5-47 (2) find that a violation did not occur.

5-48 (l) The notice of the order under Subsection (k) that is
5-49 sent to the person in accordance with Chapter 2001, Government
5-50 Code, must include a statement of the right of the person to
5-51 judicial review of the order.

5-52 Sec. 254.206. PAYMENT AND COLLECTION OF ADMINISTRATIVE
5-53 PENALTY; JUDICIAL REVIEW. (a) Within 30 days after the date an
5-54 order of the commissioner of state health services under Section
5-55 254.205(k) that imposes an administrative penalty becomes final,
5-56 the person shall:

5-57 (1) pay the penalty; or

5-58 (2) file a petition for judicial review of the
5-59 commissioner's order contesting the occurrence of the violation,
5-60 the amount of the penalty, or both.

5-61 (b) Within the 30-day period prescribed by Subsection (a), a
5-62 person who files a petition for judicial review may:

5-63 (1) stay enforcement of the penalty by:

5-64 (A) paying the penalty to the court for placement
5-65 in an escrow account; or

5-66 (B) giving the court a supersedeas bond approved
5-67 by the court that:

5-68 (i) is for the amount of the penalty; and

5-69 (ii) is effective until all judicial review

6-1 of the commissioner's order is final; or
6-2 (2) request the court to stay enforcement of the
6-3 penalty by:

6-4 (A) filing with the court a sworn affidavit of
6-5 the person stating that the person is financially unable to pay the
6-6 penalty and is financially unable to give the supersedeas bond; and

6-7 (B) sending a copy of the affidavit to the
6-8 executive commissioner by certified mail.

6-9 (c) If the commissioner of state health services receives a
6-10 copy of an affidavit under Subsection (b)(2), the commissioner may
6-11 file with the court, within five days after the date the copy is
6-12 received, a contest to the affidavit. The court shall hold a
6-13 hearing on the facts alleged in the affidavit as soon as practicable
6-14 and shall stay the enforcement of the penalty on finding that the
6-15 alleged facts are true. The person who files an affidavit has the
6-16 burden of proving that the person is financially unable to pay the
6-17 penalty or to give a supersedeas bond.

6-18 (d) If the person does not pay the penalty and the
6-19 enforcement of the penalty is not stayed, the penalty may be
6-20 collected. The attorney general may sue to collect the penalty.

6-21 (e) If the court sustains the finding that a violation
6-22 occurred, the court may uphold or reduce the amount of the penalty
6-23 and order the person to pay the full or reduced amount of the
6-24 penalty.

6-25 (f) If the court does not sustain the finding that a
6-26 violation occurred, the court shall order that a penalty is not
6-27 owed.

6-28 (g) If the person paid the penalty and if the amount of the
6-29 penalty is reduced or the penalty is not upheld by the court, the
6-30 court shall order, when the court's judgment becomes final, that
6-31 the appropriate amount plus accrued interest be remitted to the
6-32 person within 30 days after the date that the judgement of the court
6-33 becomes final. The interest accrues at the rate charged on loans to
6-34 depository institutions by the New York Federal Reserve Bank. The
6-35 interest shall be paid for the period beginning on the date the
6-36 penalty is paid and ending on the date the penalty is remitted.

6-37 (h) If the person gave a supersedeas bond and the penalty is
6-38 not upheld by the court, the court shall order, when the court's
6-39 judgment becomes final, the release of the bond. If the person gave
6-40 a supersedeas bond and the amount of the penalty is reduced, the
6-41 court shall order the release of the bond after the person pays the
6-42 reduced amount.

6-43 SECTION 2. Section 843.002, Insurance Code, is amended by
6-44 amending Subdivision (7) and adding Subdivision (9-a) to read as
6-45 follows:

6-46 (7) "Emergency care" means health care services
6-47 provided in a hospital emergency facility, freestanding emergency
6-48 medical care facility, or comparable emergency facility to evaluate
6-49 and stabilize medical conditions of a recent onset and severity,
6-50 including severe pain, that would lead a prudent layperson
6-51 possessing an average knowledge of medicine and health to believe
6-52 that the individual's condition, sickness, or injury is of such a
6-53 nature that failure to get immediate medical care could:

6-54 (A) place the individual's health in serious
6-55 jeopardy;

6-56 (B) result in serious impairment to bodily
6-57 functions;

6-58 (C) result in serious dysfunction of a bodily
6-59 organ or part;

6-60 (D) result in serious disfigurement; or

6-61 (E) for a pregnant woman, result in serious
6-62 jeopardy to the health of the fetus.

6-63 (9-a) "Freestanding emergency medical care facility"
6-64 means a facility licensed under Chapter 254, Health and Safety
6-65 Code.

6-66 SECTION 3. Section 1271.155(b), Insurance Code, is amended
6-67 to read as follows:

6-68 (b) A health care plan of a health maintenance organization
6-69 must provide the following coverage of emergency care:

7-1 (1) a medical screening examination or other
7-2 evaluation required by state or federal law necessary to determine
7-3 whether an emergency medical condition exists shall be provided to
7-4 covered enrollees in a hospital emergency facility or comparable
7-5 facility;

7-6 (2) necessary emergency care shall be provided to
7-7 covered enrollees, including the treatment and stabilization of an
7-8 emergency medical condition; and

7-9 (3) services originated in a hospital emergency
7-10 facility, freestanding emergency medical care facility, or
7-11 comparable emergency facility following treatment or stabilization
7-12 of an emergency medical condition shall be provided to covered
7-13 enrollees as approved by the health maintenance organization,
7-14 subject to Subsections (c) and (d).

7-15 SECTION 4. Section 1301.001, Insurance Code, is amended by
7-16 adding Subdivision (12) to read as follows:

7-17 (12) "Freestanding emergency medical care facility"
7-18 means a facility licensed under Chapter 254, Health and Safety
7-19 Code.

7-20 SECTION 5. Section 1301.155, Insurance Code, is amended to
7-21 read as follows:

7-22 Sec. 1301.155. EMERGENCY CARE. (a) In this section,
7-23 "emergency care" means health care services provided in a hospital
7-24 emergency facility, freestanding emergency medical care facility,
7-25 or comparable emergency facility to evaluate and stabilize a
7-26 medical condition of a recent onset and severity, including severe
7-27 pain, that would lead a prudent layperson possessing an average
7-28 knowledge of medicine and health to believe that the person's
7-29 condition, sickness, or injury is of such a nature that failure to
7-30 get immediate medical care could result in:

- 7-31 (1) placing the person's health in serious jeopardy;
- 7-32 (2) serious impairment to bodily functions;
- 7-33 (3) serious dysfunction of a bodily organ or part;
- 7-34 (4) serious disfigurement; or
- 7-35 (5) in the case of a pregnant woman, serious jeopardy
7-36 to the health of the fetus.

7-37 (b) If an insured cannot reasonably reach a preferred
7-38 provider, an insurer shall provide reimbursement for the following
7-39 emergency care services at the preferred level of benefits until
7-40 the insured can reasonably be expected to transfer to a preferred
7-41 provider:

7-42 (1) a medical screening examination or other
7-43 evaluation required by state or federal law to be provided in the
7-44 emergency facility of a hospital that is necessary to determine
7-45 whether a medical emergency condition exists;

7-46 (2) necessary emergency care services, including the
7-47 treatment and stabilization of an emergency medical condition; and

7-48 (3) services originating in a hospital emergency
7-49 facility or freestanding emergency medical care facility
7-50 following treatment or stabilization of an emergency medical
7-51 condition.

7-52 SECTION 6. Not later than September 1, 2010, a freestanding
7-53 emergency medical care facility must obtain a license as required
7-54 by Chapter 254, Health and Safety Code, as added by this Act.

7-55 (b) Not later than March 1, 2010, the executive commissioner
7-56 of the Health and Human Services Commission shall adopt rules as
7-57 required by Chapter 254, Health and Safety Code, as added by this
7-58 Act.

7-59 (c) The changes in law made by Sections 3, 4, and 5 of this
7-60 Act apply only to a health insurance policy or evidence of coverage
7-61 delivered, issued for delivery, or renewed on or after March 1,
7-62 2010. A health insurance policy or evidence of coverage delivered,
7-63 issued for delivery, or renewed before that date is governed by the
7-64 law in effect immediately before that date, and that law is
7-65 continued in effect for that purpose.

7-66 (d) The Department of State Health Services may not issue a
7-67 license under Section 254.051(f), Health and Safety Code, with a
7-68 license term that extends beyond August 31, 2013.

7-69 SECTION 7. (a) Except as provided by Subsections (b) and

8-1 (c) of this section, this Act takes effect September 1, 2009.
8-2 (b) Sections 254.201, 254.202, 254.203, 254.205, and
8-3 254.206, Health and Safety Code, as added by this Act, and Sections
8-4 843.002, 1271.155, 1301.001, and 1301.155, Insurance Code, as
8-5 amended by this Act, take effect March 1, 2010.
8-6 (c) Section 254.204, Health and Safety Code, as added by
8-7 this Act, takes effect September 1, 2010.

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