

By: Zerwas

H.B. No. 2183

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of independent freestanding emergency medical care facilities and urgent care clinics; providing penalties; creating an offense.

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

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

CHAPTER 254. INDEPENDENT FREESTANDING EMERGENCY MEDICAL CARE AND URGENT CARE FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 254.001. DEFINITIONS. In this chapter:

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

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Facility" means an independent freestanding emergency medical care facility or an urgent care clinic.

(4) "Independent freestanding emergency medical care facility" means a health care facility, structurally separate and distinct from a hospital, that:

(A) receives and treats individuals requiring treatment or stabilization of an emergency or immediate medical condition;

(B) determines if an individual has an emergency

1 or immediate medical condition; or

2 (C) except for mass trauma preparation or  
3 planning, is fully capable of providing Level IV trauma care, as  
4 defined by department rule.

5 (5) "Urgent care clinic" means a health care facility  
6 that:

7 (A) provides episodic ambulatory medical care to  
8 individuals outside of a hospital emergency room setting;

9 (B) does not require an individual to make an  
10 appointment;

11 (C) provides some services typically provided in  
12 a primary care physician's office; and

13 (D) treats individuals requiring treatment of an  
14 illness or injury that requires immediate care but is not life  
15 threatening.

16 [Sections 254.002-254.050 reserved for expansion]

17 SUBCHAPTER B. FACILITY LICENSING

18 Sec. 254.051. LICENSE REQUIRED. (a) Except as provided  
19 by Section 254.052, a person may not establish or operate an  
20 independent freestanding emergency medical care facility or an  
21 urgent care clinic in this state without a license issued under this  
22 chapter.

23 (b) Except as provided by Section 254.052, a facility,  
24 entity, or other person may not hold itself out to the public as an  
25 "emergency" medical facility or "urgent" medical care center or use  
26 any similar term, as defined by department rule, that would give the  
27 impression that the person is providing emergency medical care or

1 treatment or urgent medical care unless the person holds a license  
2 issued under this chapter.

3 (c) Each separate facility location must have a separate  
4 license.

5 (d) A license issued under this chapter is not transferable  
6 or assignable.

7 Sec. 254.052. EXEMPTIONS FROM LICENSING REQUIREMENT. The  
8 following facilities are not required to be licensed under this  
9 chapter:

10 (1) a licensed hospital;

11 (2) a hospital that is owned or operated by this state;

12 (3) a facility located within or connected to a  
13 hospital described by Subdivision (1) or (2);

14 (4) an independent emergency medical care facility  
15 that is owned or operated by a hospital described by Subdivision (1)  
16 or (2);

17 (5) a licensed nursing home; or

18 (6) a licensed ambulatory surgical center.

19 Sec. 254.053. LICENSE APPLICATION AND ISSUANCE. (a) An  
20 applicant for a license under this chapter must submit an  
21 application to the department on a form prescribed by the  
22 department.

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

25 (c) The application must contain evidence that the  
26 facility's staff meets qualifications standards adopted for the  
27 staff of that type of facility by the executive commissioner under

1 this chapter.

2 (d) The department shall issue a license if, after  
3 inspection and investigation, it finds that the applicant and the  
4 facility meet the requirements of this chapter and the standards  
5 adopted for that type of facility by the executive commissioner  
6 under this chapter.

7 (e) A renewal license fee must be paid annually or  
8 biennially based on the schedule determined by the department.

9 [Sections 254.054-254.100 reserved for expansion]

10 SUBCHAPTER C. POWERS AND DUTIES OF  
11 EXECUTIVE COMMISSIONER AND DEPARTMENT

12 Sec. 254.101. ADOPTION OF RULES. (a) The executive  
13 commissioner shall adopt rules necessary to implement this chapter,  
14 including rules to address, for each type of facility:

15 (1) requirements for the issuance, renewal, denial,  
16 suspension, and revocation of a license to operate a facility;

17 (2) minimum design and construction standards for the  
18 premises of a facility, including plumbing, heating, lighting,  
19 ventilation, and other design standards necessary to ensure the  
20 health and safety of the facility's patients;

21 (3) minimum standards for the equipment essential to  
22 the health and welfare of the facility's patients;

23 (4) transfer protocols for patients requiring  
24 advanced medical care at a hospital emergency room;

25 (5) minimum standards for the number of and  
26 qualifications for the facility's professional staff and other  
27 personnel;

1           (6) minimum standards for the sanitary and hygienic  
2 conditions within the facility;

3           (7) requirements for the contents, maintenance, and  
4 release of medical records;

5           (8) the provision of laboratory and radiological  
6 services;

7           (9) the distribution and administration of drugs and  
8 controlled substances;

9           (10) the establishment of a quality assurance program  
10 for patient care; and

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

14           (b) In adopting the rules required under Subsection (a), the  
15 executive commissioner shall consider the statutes enacted by and  
16 rules adopted in other states to regulate independent freestanding  
17 emergency medical care facilities and urgent care clinics. Before  
18 adopting rules concerning transfer protocols, the executive  
19 commissioner must consult with physicians who provide emergency  
20 medical care and medical consultant organizations.

21           (c) In adopting the rules required under Subsection (a), the  
22 executive commissioner may adopt different minimum standards and  
23 requirements to reflect the different services provided and the  
24 purposes served by each type of facility.

25           (d) This section does not authorize the executive  
26 commissioner to:

27           (1) establish the qualifications of a licensed

1 practitioner; or

2 (2) permit a person to provide health care services  
3 who is not authorized to provide those services under another state  
4 law.

5 Sec. 254.102. INSPECTIONS. The department may inspect a  
6 facility at reasonable times as necessary to ensure compliance with  
7 this chapter.

8 Sec. 254.103. MONITORING. If a facility's failure to  
9 comply with this chapter creates a serious threat to the health and  
10 safety of the public, the department may appoint a monitor for the  
11 facility to ensure compliance with this chapter. The facility  
12 shall pay the cost of the monitor.

13 Sec. 254.104. FEES. (a) The executive commissioner shall  
14 set fees imposed by this chapter in amounts reasonable and  
15 necessary to defray the cost of administering this chapter.

16 (b) All fees collected under this chapter shall be deposited  
17 in the state treasury to the credit of the general revenue fund and  
18 may be appropriated to the department only to administer and  
19 enforce this chapter.

20 [Sections 254.105-254.150 reserved for expansion]

21 SUBCHAPTER D. FACILITY REGULATION

22 Sec. 254.151. FACILITY POSTING REQUIREMENTS. (a) A  
23 facility required to be licensed under this chapter shall post at  
24 each public entryway in a conspicuous location readily visible to a  
25 person entering the facility a sign that includes a description of  
26 the health care services provided by the facility.

27 (b) The executive commissioner by rule shall determine the

1 design, the size, and any required wording of the sign.

2 Sec. 254.152. INDEPENDENT FREESTANDING EMERGENCY MEDICAL  
3 CARE FACILITY REQUIREMENTS. An independent freestanding emergency  
4 medical care facility required to be licensed under this chapter  
5 must comply with the requirements of the federal Emergency Medical  
6 Treatment and Active Labor Act of 1986 (42 U.S.C. Section 1395dd)  
7 that are applicable to an independent emergency medical facility  
8 owned or operated by a hospital, including the requirement that the  
9 facility provide emergency medical care to individuals who are  
10 present at the facility with emergency medical conditions,  
11 regardless of their ability to pay.

12 Sec. 254.153. COMPLAINTS. A person may file a complaint  
13 with the department against a facility licensed under this chapter.

14 [Sections 254.154-254.200 reserved for expansion]

15 SUBCHAPTER E. DISCIPLINARY ACTION AND PENALTIES

16 Sec. 254.201. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE;  
17 PROBATION. (a) The department may deny, suspend, or revoke a  
18 license for:

19 (1) a violation of this chapter or a rule adopted under  
20 this chapter; or

21 (2) a history of continuing noncompliance with this  
22 chapter or rules adopted under this chapter.

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

27 (c) If the department finds that a facility is in repeated

1 noncompliance with this chapter or rules adopted under this chapter  
2 but that the noncompliance does not endanger public health and  
3 safety, the department may schedule the facility for probation  
4 rather than suspending or revoking the facility's license. The  
5 department shall:

6 (1) provide notice to the facility of the probation  
7 and of the items of noncompliance not later than the 10th day before  
8 the date the probation period begins; and

9 (2) designate a period of not less than 30 days during  
10 which the facility remains under probation.

11 (d) During a facility's probationary period, the facility  
12 must correct the items that were in noncompliance and report the  
13 corrections to the department for approval.

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

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

23 (b) An emergency suspension under this section is effective  
24 on the later of:

25 (1) the date stated in the suspension order; or

26 (2) the 10th day after the date notice of the  
27 suspension is sent to the license holder.



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

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

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

15       (b) A district court, on petition of the department and on a  
16 finding by the court that a person is violating this chapter or the  
17 rules adopted under this chapter, may by injunction:

18               (1) prohibit a person from continuing the violation;  
19               (2) restrain or prevent the establishment or operation  
20 of a facility without a license issued under this chapter; or

21               (3) grant any other injunctive relief warranted by the  
22 facts.

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

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

27       Sec. 254.204. IMPOSITION OF ADMINISTRATIVE PENALTY. (a)

1 The department may impose an administrative penalty on a person  
2 licensed under this chapter who violates this chapter or a rule or  
3 order adopted under this chapter. A penalty collected under this  
4 section or Section 254.205 shall be deposited in the state treasury  
5 in the general revenue fund.

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

8 (c) The amount of the penalty may not exceed \$1,000 for each  
9 violation, and each day a violation continues or occurs is a  
10 separate violation for purposes of imposing a penalty. The total  
11 amount of the penalty assessed for a violation continuing or  
12 occurring on separate days under this subsection may not exceed  
13 \$5,000.

14 (d) The amount shall be based on:

15 (1) the seriousness of the violation, including the  
16 nature, circumstances, extent, and gravity of the violation;

17 (2) the threat to health or safety caused by the  
18 violation;

19 (3) the history of previous violations;

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

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

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

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

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

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

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

4               (3) inform the person of the person's right to a  
5 hearing on the occurrence of the violation, the amount of the  
6 penalty, or both.

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

9               (1) accept the determination and recommended penalty  
10 of the department; or

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

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

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

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

27       (k) Based on the findings of fact, conclusions of law, and

1 proposal for a decision, the commissioner of state health services  
2 by order may:

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

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

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

10 Sec. 254.205. PAYMENT AND COLLECTION OF ADMINISTRATIVE  
11 PENALTY; JUDICIAL REVIEW. (a) Within 30 days after the date an  
12 order of the commissioner of state health services under Section  
13 254.204(k) that imposes an administrative penalty becomes final,  
14 the person shall:

15 (1) pay the penalty; or

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

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

21 (1) stay enforcement of the penalty by:

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

24 (B) giving the court a supersedeas bond approved  
25 by the court that:

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

27 (ii) is effective until all judicial review

1 of the commissioner's order is final; or

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

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

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

9 (c) If the commissioner of state health services receives a  
10 copy of an affidavit under Subsection (b)(2), the commissioner may,  
11 not later than the fifth day after the date the copy is received,  
12 file with the court a contest to the affidavit. The court shall  
13 hold a hearing on the facts alleged in the affidavit as soon as  
14 practicable and shall stay the enforcement of the penalty on  
15 finding that the alleged facts are true. The person who files an  
16 affidavit has the burden of proving that the person is financially  
17 unable to pay the penalty or to give a supersedeas bond.

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

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

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

1       (g) If the person paid the penalty and if the amount of the  
2 penalty is reduced or the penalty is not upheld by the court, the  
3 court shall order, when the court's judgment becomes final, that  
4 the appropriate amount plus accrued interest be remitted to the  
5 person within 30 days after the date that the judgment of the court  
6 becomes final. The interest accrues at the rate charged on loans to  
7 depository institutions by the New York Federal Reserve Bank. The  
8 interest shall be paid for the period beginning on the date the  
9 penalty is paid and ending on the date the penalty is remitted.

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

16       Sec. 254.206. CRIMINAL PENALTY. (a) A person commits an  
17 offense if the person violates Section 254.051(a) or (b).

18       (b) An offense under this section is a misdemeanor  
19 punishable by a fine of not more than \$100 for the first offense and  
20 not more than \$200 for each subsequent offense.

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

23       Sec. 254.207. CIVIL PENALTY. (a) A person who violates  
24 this chapter or a rule adopted under this chapter is liable for a  
25 civil penalty if the department determines that the violation  
26 threatens the health and safety of a patient. A penalty under this  
27 section is in an amount of not less than \$100 and not more than \$500

1 for each violation.

2 (b) Each day a violation continues constitutes a separate  
3 violation for the purposes of this section.

4 (c) The attorney general may bring suit to recover a civil  
5 penalty under this section.

6 SECTION 2. Chapter 1451, Insurance Code, is amended by  
7 adding Subchapter J to read as follows:

8 SUBCHAPTER J. TREATMENT AT INDEPENDENT FREESTANDING EMERGENCY

9 MEDICAL CARE FACILITY

10 Sec. 1451.451. DEFINITIONS. In this subchapter:

11 (1) "Enrollee" means an individual covered by a health  
12 benefit plan.

13 (2) "Independent freestanding emergency medical care  
14 facility" means an independent freestanding emergency medical care  
15 facility licensed under Chapter 254, Health and Safety Code.

16 (3) "Managed care plan" means a health benefit plan  
17 under which health care services are provided to enrollees through  
18 contracts with health care providers and that requires enrollees to  
19 use participating providers or that provides a different level of  
20 coverage for enrollees who use participating providers.

21 Sec. 1451.452. APPLICABILITY OF SUBCHAPTER. (a) This  
22 subchapter applies only to a health benefit plan that provides  
23 benefits for medical or surgical expenses incurred as a result of a  
24 health condition, accident, or sickness, including an individual,  
25 group, blanket, or franchise insurance policy or insurance  
26 agreement, a group hospital service contract, or an individual or  
27 group evidence of coverage or similar coverage document that is

1 offered by:

2 (1) an insurance company;

3 (2) a group hospital service corporation operating  
4 under Chapter 842;

5 (3) a fraternal benefit society operating under  
6 Chapter 885;

7 (4) a stipulated premium company operating under  
8 Chapter 884;

9 (5) an exchange operating under Chapter 942;

10 (6) a health maintenance organization operating under  
11 Chapter 843;

12 (7) a multiple employer welfare arrangement that holds  
13 a certificate of authority under Chapter 846; or

14 (8) an approved nonprofit health corporation that  
15 holds a certificate of authority under Chapter 844.

16 (b) This subchapter applies to group health coverage made  
17 available by a school district in accordance with Section 22.004,  
18 Education Code.

19 (c) Notwithstanding Section 172.014, Local Government Code,  
20 or any other law, this subchapter applies to health and accident  
21 coverage provided by a risk pool created under Chapter 172, Local  
22 Government Code.

23 (d) Notwithstanding any provision in Chapter 1551, 1575,  
24 1579, or 1601 or any other law, this subchapter applies to:

25 (1) a basic coverage plan under Chapter 1551;

26 (2) a basic plan under Chapter 1575;

27 (3) a primary care coverage plan under Chapter 1579;



1 and

2 (4) basic coverage under Chapter 1601.

3 (e) Notwithstanding any other law, a standard health  
4 benefit plan provided under Chapter 1507 must provide the coverage  
5 required by this subchapter.

6 (f) Notwithstanding Section 1501.251 or any other law, this  
7 subchapter applies to coverage under a small employer health  
8 benefit plan subject to Chapter 1501.

9 Sec. 1451.453. EXCEPTION. This subchapter does not apply  
10 to:

11 (1) a plan that provides coverage:

12 (A) for wages or payments in lieu of wages for a  
13 period during which an employee is absent from work because of  
14 sickness or injury;

15 (B) as a supplement to a liability insurance  
16 policy;

17 (C) for credit insurance;

18 (D) only for dental or vision care;

19 (E) only for hospital expenses; or

20 (F) only for indemnity for hospital confinement;

21 (2) a Medicare supplemental policy as defined by  
22 Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

23 (3) a workers' compensation insurance policy; or

24 (4) medical payment insurance coverage provided under  
25 a motor vehicle insurance policy.

26 Sec. 1451.454. REQUIRED COVERAGE UNDER CERTAIN HEALTH  
27 BENEFIT PLANS. A health benefit plan, other than a managed care

1 plan, must provide coverage for medically necessary services  
2 provided to an enrollee by an independent freestanding emergency  
3 medical care facility that are within the scope of the facility's  
4 license.

5 Sec. 1451.455. REQUIRED COVERAGE UNDER MANAGED CARE PLANS.

6 (a) If an enrollee of a managed care plan, other than a plan  
7 governed by Section 1451.456 or 1451.457, cannot reasonably reach a  
8 participating provider, the managed care plan shall provide  
9 reimbursement for emergency medical care services provided to an  
10 enrollee by an independent freestanding emergency medical care  
11 facility that are within the scope of the facility's license.

12 (b) Reimbursement provided under Subsection (a) must be  
13 provided at the usual and customary rate, or at an agreed rate, and  
14 provided until the enrollee can reasonably be expected to transfer  
15 to a participating provider.

16 Sec. 1451.456. REQUIRED COVERAGE UNDER HEALTH MAINTENANCE  
17 ORGANIZATION. A health maintenance organization shall pay for  
18 emergency medical care services provided to an enrollee by a  
19 non-network independent freestanding emergency medical care  
20 facility that are within the scope of the facility's license as  
21 required under Section 1271.155.

22 Sec. 1451.457. REQUIRED COVERAGE UNDER PREFERRED PROVIDER  
23 BENEFIT PLAN. If an insured under a preferred provider benefit plan  
24 cannot reasonably reach a participating provider, the insurer shall  
25 provide reimbursement for emergency care services provided to the  
26 insured by an independent freestanding emergency medical care  
27 facility that are within the scope of the facility's license as

1 required by Section 1301.155.

2 Sec. 1451.458. NOTICE OF COVERAGE. (a) An issuer of a  
3 health benefit plan shall provide to each individual enrolled in  
4 the plan written notice of the coverage required under this  
5 subchapter.

6 (b) The notice must be provided in accordance with rules  
7 adopted by the commissioner.

8 Sec. 1451.459. RULES. The commissioner shall adopt rules  
9 necessary to administer this subchapter.

10 SECTION 3. Subchapter J, Chapter 1451, Insurance Code, as  
11 added by this Act, applies only to a health benefit plan that is  
12 delivered, issued for delivery, or renewed on or after January 1,  
13 2010. A health benefit plan that is delivered, issued for delivery,  
14 or renewed before January 1, 2010, is governed by the law as it  
15 existed immediately before the effective date of this Act, and that  
16 law is continued in effect for that purpose.

17 SECTION 4. (a) Not later than September 1, 2010, an  
18 independent freestanding emergency medical care facility and an  
19 urgent care clinic must obtain a license as required by Chapter 254,  
20 Health and Safety Code, as added by this Act.

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

25 SECTION 5. (a) Except as provided by Subsection (b) of  
26 this section, this Act takes effect September 1, 2009.

27 (b) Sections 254.201 through 254.207, Health and Safety

H.B. No. 2183

1 Code, as added by this Act, take effect September 1, 2010.