# SENATE AMENDMENTS

## 2nd Printing

By: Isett, Rios Ybarra, Laubenberg, et al. H.B. No. 1357

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of freestanding emergency medical care facilities; providing an administrative penalty; 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. FREESTANDING EMERGENCY MEDICAL CARE FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 254.001. DEFINITIONS. In this chapter:

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

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

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

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

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

[Sections 254.002-254.050 reserved for expansion]

SUBCHAPTER B. LICENSING

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

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

(c) Each facility must have a separate license.

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

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

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

Sec. 254.052. EXEMPTIONS FROM LICENSING REQUIREMENT. The

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

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

(2) temporary emergency clinics in disaster areas;

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

(4) a licensed nursing home;

(5) a licensed hospital; or

(6) a licensed ambulatory surgical center.

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

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

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

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

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

[Sections 254.054-254.100 reserved for expansion]

SUBCHAPTER C. EXECUTIVE COMMISSIONER AND DEPARTMENT POWERS AND DUTIES

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

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

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

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

[Sections 254.105-254.150 reserved for expansion]

SUBCHAPTER D. REGULATION OF FACILITIES

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

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

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

(3) the administration of the facility;

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

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

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

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

(8) the provision of laboratory and radiological services;

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

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

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

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

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

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

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

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

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

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

(d) This section expires August 31, 2013.

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

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

[Sections 254.154-254.200 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT AND PENALTIES

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

chapter.

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

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

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

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

(b) An emergency suspension under this section is effective

immediately without a hearing on notice to the license holder.

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

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

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

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

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

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

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

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

authorized by this section at the request of the department.

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

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

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

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

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

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

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

(d) The amount shall be based on:

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

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

(3) the history of previous violations;

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

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

(6) any other matter that justice may require.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) find that a violation did not occur.

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

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

(1) pay the penalty; or

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

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

(1) stay enforcement of the penalty by:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) result in serious impairment to bodily functions;

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

(D) result in serious disfigurement; or

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

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

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

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

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

covered enrollees in a hospital emergency facility or comparable facility;

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

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

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

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

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

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

(1) placing the person's health in serious jeopardy;

(2) serious impairment to bodily functions;

(3) serious dysfunction of a bodily organ or part;

(4) serious disfigurement; or

(5) in the case of a pregnant woman, serious jeopardy to the health of the fetus.

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

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

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

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

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

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

Act.

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

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

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

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

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

ADOPTED

MAY 2 6 2009

Secretary of the Senate

By: _____ H.B. No. 1357

Substitute the following for H.B. No. 1357

By: _____ C.S.H.B. No. 1357

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of freestanding emergency medical care facilities; providing an administrative penalty; 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. FREESTANDING EMERGENCY MEDICAL CARE FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 254.001. DEFINITIONS. In this chapter:

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

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

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

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

(5) "Freestanding emergency medical care facility"

means a facility, structurally separate and distinct from a hospital that receives an individual and provides emergency care, as defined by Subsection (2).

[Sections 254.002-254.050 reserved for expansion]

SUBCHAPTER B. LICENSING

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

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

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

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

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

facility that is in operation 7 days per week and at least 12 hours per day.

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

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

(2) temporary emergency clinics in disaster areas;

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

(4) a licensed nursing home;

(5) a licensed hospital;

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

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

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

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

(B) granted provider-based status by the Centers

for Medicare and Medicaid Services; or

(9) a licensed ambulatory surgical center.

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

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

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

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

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

[Sections 254.054-254.100 reserved for expansion]

SUBCHAPTER C. EXECUTIVE COMMISSIONER AND DEPARTMENT POWERS AND DUTIES

Sec. 254.101. ADOPTION OF RULES. The executive commissioner shall adopt rules necessary to implement this chapter, including requirements for the issuance, renewal,

denial, suspension, and revocation of a license to operate a facility.

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

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

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

[Sections 254.105-254.150 reserved for expansion]

SUBCHAPTER D. REGULATION OF FACILITIES

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

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

(2) the number, qualifications, and organization of

the professional staff and other personnel;

(3) the administration of the facility;

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

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

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

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

(8) the provision of laboratory and radiological services;

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

(10) a quality assurance program for patient care;

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

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

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

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

(D) the names and license numbers of any physicians licensed by the Texas Medical Board who have a financial interest in the facility or any entity which has an ownership interest in the facility.

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

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

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

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

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

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

(b) A facility that is not in continuous operation may not

advertise, market, or otherwise promote the services provided by the facility using the term "emergency" or any similar term defined by department rule.

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

(d) This section expires August 31, 2013.

Sec. 254.153. FACILITY CARE REQUIREMENTS. (a) A facility shall provide to each facility patient, without regard to the individual's ability to pay, an appropriate medical screening, examination, and stabilization within the facility's capability, including ancillary services routinely available to the facility, to determine whether an emergency medical condition exists and any necessary stabilizing treatment.

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

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

[Sections 254.155-254.200 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT AND PENALTIES

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

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

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

(d) The department may suspend or revoke the license of a facility that does not correct items that were in noncompliance

or that does not comply with this chapter or the rules adopted under this chapter within the applicable probation period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 254.205. IMPOSITION OF ADMINISTRATIVE PENALTY. (a)

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

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

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

(d) The amount shall be based on:

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

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

(3) the history of previous violations;

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

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

(6) any other matter that justice may require.

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

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

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

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

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

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

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

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

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

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

Office of Administrative Hearings shall conduct the hearing.

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

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

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

(2) find that a violation did not occur.

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

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

(1) pay the penalty; or

(2) file a petition for judicial review of the commissioner's order contesting the occurrence of the violation,

the amount of the penalty, or both.

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

(1) stay enforcement of the penalty by:

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

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

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

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

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

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

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

(c) If the commissioner of state health services receives a copy of an affidavit under Subsection (b)(2), the commissioner may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as

practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

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

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

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

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

the date the penalty is remitted.

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

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

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

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

(B) result in serious impairment to bodily functions;

(C) result in serious dysfunction of a bodily

organ or part;

(D) result in serious disfigurement; or

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

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

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

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

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

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

(3) services originated in a hospital emergency facility, freestanding emergency medical care facility, or comparable emergency facility following treatment or stabilization of an emergency medical condition shall be

provided to covered enrollees as approved by the health maintenance organization, subject to Subsections (c) and (d).

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

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

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

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

(1) placing the person's health in serious jeopardy;

(2) serious impairment to bodily functions;

(3) serious dysfunction of a bodily organ or part;

(4) serious disfigurement; or

(5) in the case of a pregnant woman, serious jeopardy

to the health of the fetus.

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

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

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

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

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

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

as added by this Act.

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

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

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

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

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

FLOOR AMENDMENT NO. 1

ADOPTED

BY: Deuell

MAY 26 2009

Secretary of the Senate

Amend C.S.S.B. 1357 as follows:

(1) Amend Section 254.051 by adding a new subsection (f):

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

(2) Amend Section 254.053 by inserting a new subsection (c) and renumbering subsequent sections accordingly:

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

(3) Amend 254.151 by inserting a new subsection (a)(12) and renumbering subsequent sections accordingly and adding a new subsection (c):

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

(c) The minimum standards under this section shall apply to facilities operating 24 hours a day and 7 days per week and facilities operating less than 24 hours a day and 7 days per week.

(4) Strike SECTION 6(d) of the bill.

ADOPTED

MAY 26 2009

Secretary of the Senate

FLOOR AMENDMENT NO. 2 BY: Carona

Amend H .B. No. 1357 by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION ____. (a) Section 843.306, Insurance Code, is amended by adding Subsection (f) to read as follows:

(f) A health maintenance organization may not terminate participation of a physician or provider solely because the physician or provider informs an enrollee of the full range of physicians and providers available to the enrollee, including out-of-network providers.

(b) Subsection (a), Section 843.363, Insurance Code, is amended to read as follows:

(a) A health maintenance organization may not, as a condition of a contract with a physician, dentist, or provider, or in any other manner, prohibit, attempt to prohibit, or discourage a physician, dentist, or provider from discussing with or communicating in good faith with a current, prospective, or former patient, or a person designated by a patient, with respect to:

(1) information or opinions regarding the patient's health care, including the patient's medical condition or treatment options;

(2) information or opinions regarding the terms, requirements, or services of the health care plan as they relate to the medical needs of the patient; [~~or~~]

(3) the termination of the physician's, dentist's, or provider's contract with the health care plan or the fact that the physician, dentist, or provider will otherwise no longer be providing medical care, dental care, or health care services under the health care plan; or

(4) information regarding the availability of facilities, both in-network and out-of-network, for the treatment of the patient's medical condition.

(c) Section 1301.001, Insurance Code, is amended by adding Subdivision (5-a) to read as follows:

(5-a) "Out-of-network provider" means a physician or health care provider who is not a preferred provider.

(d) Subchapter A, Chapter 1301, Insurance Code, is amended by adding Sections 1301.0051 and 1301.0052 to read as follows:

Sec. 1301.0051. ACCESS TO OUT-OF-NETWORK PROVIDERS. An insurer may not terminate, or threaten to terminate, an insured's participation in a preferred provider benefit plan solely because the insured uses an out-of-network provider.

Sec. 1301.0052. PROTECTED COMMUNICATIONS BY PREFERRED PROVIDERS. (a) An insurer may not in any manner prohibit, attempt to prohibit, penalize, terminate, or otherwise restrict a preferred provider from communicating with an insured about the availability of out-of-network providers for the provision of the insured's medical or health care services.

(b) An insurer may not terminate the contract of or otherwise penalize a preferred provider solely because the provider's patients use out-of-network providers for medical or health care services.

(c) A preferred provider terminated by an insurer is entitled, on request, to all information on which the insurer wholly or partly based the termination, including the economic profile of the preferred provider, the standards by which the provider is measured, and the statistics underlying the profile and standards.

(d) An insurer's contract with a preferred provider may require that, except in a case of a medical emergency as determined

by the preferred provider, before the provider may make an out-of-network referral for an insured, the preferred provider shall inform the insured:

(1) that:

(A) the insured may choose a preferred provider or an out-of-network provider; and

(B) if the insured chooses the out-of-network provider the insured may incur higher out-of-pocket expenses; and

(2) whether the preferred provider has a financial interest in the out-of-network provider.

(e)(1) Except as provided by this subsection, the changes in law made by this section apply only to an insurance policy, health maintenance organization contract, or evidence of coverage delivered, issued for delivery, or renewed on or after January 1, 2010. A policy, contract, or evidence of coverage issued before that date is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(2) Sections 843.306 and 843.363, Insurance Code, as amended by this Act, and Section 1301.0052, Insurance Code, as added by this Act, apply only to a contract between a health maintenance organization or preferred provider benefit plan issuer and a physician or health care provider that is entered into or renewed on or after the effective date of this Act. A contract entered into or renewed before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

# ADOPTED

MAY 2 6 2009

Secretary of the Senate

FLOOR AMENDMENT NO. 3 BY: _____

Amend H.B. 1357 by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION ____. Section 243.002, Health and Safety Code, is amended by amending Subdivision (3) and adding Subdivisions (3-a), (3-b), and (5) to read as follows:

(3) "Department" means the [~~Texas~~] Department of State Health Services.

(3-a) "Designated physician group" means any business entity formed exclusively by one or more physicians licensed to practice medicine in this state, including a professional association, a professional corporation, a professional limited liability company, or a professional limited liability partnership, that has entered into a use agreement.

(3-b) "Facility" means the physical premises that the department determines constitutes an ambulatory surgical center.

(5) "Use agreement" means a written executed agreement between a licensed ambulatory surgical center and a designated physician group under which the ambulatory surgical center allows the designated physician group to use its facility to provide ambulatory surgical center services on a part-time basis to the designated physician group's patients.

SECTION ____. The heading to Section 243.003, Health and Safety Code, is amended to read as follows:

Sec. 243.003. LICENSE REQUIRED; USE AGREEMENTS.

SECTION ____. Section 243.003, Health and Safety Code, is amended by amending Subsection (c) and adding Subsections (d), (e), (f), and (g) to read as follows:

(c) Except as provided by Subsection (d), a [~~A~~] license is

not transferable or assignable.

(d) Except as provided by Subsection (e), an ambulatory surgical center may share its license under a sublicense agreement with one or more designated physician groups that is entered into under the terms of a use agreement, if the ambulatory surgical center:

(1) remains responsible for ensuring that the facility and all surgical and other ambulatory surgical center services provided in the facility by any designated physician group comply with this chapter and applicable department rules; and

(2) at least annually, provides the department with:

(A) a list of the designated physician groups with which the ambulatory surgical center has entered into use agreements; and

(B) any other information that the department requires by rule about the designated physician groups or use agreements.

(e) A use agreement under Subsection (d) may not cover a transaction paid for under the Medicare or Medicaid health program.

(f) A use agreement entered into under this section must comply with all applicable federal laws and regulations.

(g) The department by rule shall prescribe minimum requirements for a use agreement entered into under this chapter.

SECTION ____. Section 843.002, Insurance Code, is amended by adding Subdivision (1-a) and amending Subdivision (24) to read as follows:

(1-a) "Ambulatory surgical center" means a facility licensed under Chapter 243, Health and Safety Code, and includes a designated physician group operating under a use agreement entered into under that chapter.

(24) "Provider" means:

(A) a person, other than a physician, who is licensed or otherwise authorized to provide a health care service in this state, including:

(i) a chiropractor, registered nurse, pharmacist, optometrist, registered optician, or acupuncturist; or

(ii) a pharmacy, hospital, ambulatory surgical center, or other institution or organization;

(B) a person who is wholly owned or controlled by a provider or by a group of providers who are licensed or otherwise authorized to provide the same health care service; or

(C) a person who is wholly owned or controlled by one or more hospitals and physicians, including a physician-hospital organization.

SECTION ____. Section 1301.001, Insurance Code, is amended by amending Subdivisions (1) and (4) and adding Subdivision (1-a) to read as follows:

(1) "Ambulatory surgical center" means a facility licensed under Chapter 243, Health and Safety Code, and includes a designated physician group operating under a use agreement entered into under that chapter.

(1-a) "Health care provider" means a practitioner, institutional provider, or other person or organization that furnishes health care services and that is licensed or otherwise authorized to practice in this state. The term does not include a physician.

(4) "Institutional provider" means an ambulatory surgical center, a hospital, a nursing home, or another [~~other~~] medical or health-related service facility that provides care for the sick or injured or other care that may be covered in a health insurance policy.

SECTION ____. Section 401.011, Labor Code, is amended by adding Subdivision (4-a) and amending Subdivision (20) to read as follows:

(4-a) "Ambulatory surgical center" means a facility licensed under Chapter 243, Health and Safety Code, and includes a designated physician group operating under a use agreement entered into under that chapter.

(20) "Health care facility" means a hospital, ambulatory surgical center, emergency clinic, outpatient clinic, or other facility providing health care.

SECTION ____. The change in law made by this Act applies only to a use agreement under Section 243.003, Health and Safety Code, as amended by this Act, that is entered into on or after the effective date of this Act. A use agreement entered into before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

**LEGISLATIVE BUDGET BOARD**
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 28, 2009**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE:** **HB1357** by Isett (Relating to the regulation of freestanding emergency medical care facilities; providing an administrative penalty; creating an offense.), **As Passed 2nd House**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB1357, As Passed 2nd House: an impact of $0 through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

## General Revenue-Related Funds, Five-Year Impact:

| Fiscal Year | Probable Net Positive/(Negative) Impact to General Revenue Related Funds |
|---|---|
| 2010 | $0 |
| 2011 | $0 |
| 2012 | $0 |
| 2013 | $0 |
| 2014 | $0 |

## All Funds, Five-Year Impact:

| Fiscal Year | Probable (Cost) from *New General Revenue Dedicated: Freestanding Emergency Medical Care Facility Licensing Fund* | Probable Revenue Gain from *New General Revenue Dedicated: Freestanding Emergency Medical Care Facility Licensing Fund* | Change in Number of State Employees from FY 2009 |
|---|---|---|---|
| 2010 | ($472,653) | $559,250 | 4.5 |
| 2011 | ($181,992) | $231,125 | 2.5 |
| 2012 | ($181,992) | $231,125 | 2.5 |
| 2013 | ($181,992) | $231,125 | 2.5 |
| 2014 | ($181,992) | $231,125 | 2.5 |

## Fiscal Analysis

The bill would implement some of the recommendations presented in the Legislative Budget Board's *Government Effectiveness and Efficiency Report* to the Eighty-first Legislature entitled, "Regulate Emergency Care Facilities to Standardize Quality of Care."

The bill would add Chapter 254, Freestanding Emergency Medical Care Facilities, to the Health and Safety Code. It would define a freestanding emergency medical facility and prohibit establishment or operation of a facility without a license. It would prevent a facility from holding itself out to the public as an emergency medical facility unless it holds a license. The bill would require the Executive Commissioner of the Health and Human Services Commission (HHSC) by rule to establish a

classification for a facility that is in continuous operation 24 hours per day and 7 days per week and classification for a facility that is in operation 7 days per week and at least 12 hours per day. DSHS would be prohibited from issuing a license to a facility that is not in continuous operation with a term that extends beyond August 31, 2013. The subsection and rules pertaining to facilities not in continuous operation would expire August 31, 2013.

The Department of State Health Services (DSHS) would be required to issue a license by September 1, 2010, if after inspection and investigation, it finds the applicant and facility meet the requirements and standards. DSHS would be allowed to inspect a facility to ensure compliance.

The bill would require that the licensing fee be paid annually on renewal of the license. The Executive Commissioner would be required to set fees in amounts reasonable and necessary to defray the cost of administration. The bill would require that fees be deposited in the State Treasury to the credit of the freestanding emergency medical care facility licensing fund and may be appropriated to the department only to administer and enforce this chapter.

The Executive Commissioner would be required to adopt rules by March 1, 2010 to implement the chapter including requirements for the issuance, renewal, denial, suspension, and revocation of a license, and minimum standards applicable to a facility.

The bill would allow a person to file a complaint with DSHS against a facility licensed under this chapter.

The bill would allow DSHS to deny, suspend, or revoke a license including through the use of an emergency suspension for a violation of the chapter or a rule, and would require these actions and the appeal to be governed by the procedures for a contested case hearing under Chapter 2001, Government Code, Administrative Procedure. The bill would allow DSHS to petition a district court for a temporary restraining order against a freestanding emergency medical care facility. At DSHS' request, the Office of the Attorney General (OAG) would be required to institute and conduct a suit.

The bill would create a criminal penalty of a Class C misdemeanor for a person that establishes or operates a freestanding emergency medical care facility without a license. The bill would provide for administrative penalties. Proceedings to impose the penalty would be considered to be a contested case under Chapter 2001. If the person requests a hearing, DSHS would be required to refer the matter to the State Office of Administrative Hearings (SOAH) to conduct the hearing.

The bill would amend the Insurance Code to include a freestanding emergency medical care facility or comparable emergency facility in the list of facilities providing emergency care and require specified carriers to provide coverage of emergency care services provided in freestanding emergency medical care facilities or comparable emergency facilities or to provide reimbursement to a freestanding emergency medical care facility at preferred rates until a patient transfer.

The bill would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in the bill would be subject to funds consolidation review by the current Legislature.

Senate Floor Amendment 2: The amendment would amend the Insurance Code regarding the operation of certain managed care plans regarding the insured's ability to utilize out-of-network health care providers.

Second Floor Amendment 3: The bill would amend the Health and Safety Code relating to ambulatory surgical centers and the provision of services at those centers by certain designated physician groups.

**Methodology**

This analysis assumes the costs associated with adopting rules to regulate freestanding emergency medical care facilities could be absorbed by HHSC within existing resources.

DSHS assumes it would license 75 freestanding emergency care facilities. DSHS indicates there is no historical data to determine how many facilities would operate continuously and how many would operate fewer than 24 hours per day. DSHS indicates it would begin inspections on March 1, 2010.

To inspect and license facilities by September 1, 2010, DSHS indicates it would be required to hire a total of 6 new staff members during fiscal year 2010 including 4 nurses, 1 architect, and 1 administrative assistant. To conduct complaint investigations and resurveys in fiscal year 2011 and in future years, DSHS indicates it would require 2.5 Full-Time Equivalents including 1 nurse, 0.5 architect, and 1 administrative assistant. Total staffing costs including travel for on-site inspections are $449,153 in fiscal year 2010, and $178,492 in fiscal year 2011 and in future years. Staffing costs are phased-in for fiscal year 2010.

DSHS indicates it will need to make a modification to its existing Health Facility Licensing integrated system to include the new license type and functions associated with the license, and that the modification will involve a one-time cost in fiscal year 2010 of $20,000 (200 hours of contracted programming at $100 per hour).

SOAH reports that based on the estimated number of referrals, work could be absorbed within existing resources. However, because SOAH does not receive General Revenue for work performed for DSHS, it would bill DSHS at a rate of $100 per hour. DSHS indicates one case would be referred annually, at a cost of $3,500. The cost to DSHS and revenue gain to SOAH result in a net neutral fiscal impact.

The bill would allow DSHS to charge a fee for a license to operate a freestanding emergency care facility. DSHS assumes the same fee would be charged for facilities that operate continuously and facilities that do not operate continuously. Because the bill does not specify the amount of the fee, the Comptroller of Public Accounts could not estimate the revenue gain. However, if an initial licensing fee of $7,410 and a renewal fee of $3,035 were charged and 75 facilities were licensed as assumed by DSHS, the estimated annual revenue gain would be $555,750 in fiscal year 2010 and $227,625 in fiscal year 2011 and subsequent years in General Revenue-Dedicated Funds. Since the bill would require DSHS to generate revenues sufficient to cover the costs of regulation, this analysis assumes that the agency would adjust fees as necessary to cover any additional costs associated with the implementation of this bill.

OAG anticipates any legal work resulting from the passage of the bill, including additional complaints, investigations, or cases, could be reasonably absorbed within existing resources.

Based on the analysis of the Texas Department of Insurance (TDI), it is assumed that as a result of amendments to the Insurance Code including those in Senate Floor Amendment 2, there would be a one-time revenue gain of $32,800 in the General Revenue Dedicated Account Fund 36 in fiscal year 2010 because the bill would result in additional form filings. Since General Revenue Dedicated Account Fund 36 is a self-leveling account, this analysis assumes all revenue generated would go toward fund balances or the maintenance tax would be set to recover a lower level of revenue the following year. It is also assumed that any costs realized by TDI from implementing the provisions of the bill could be absorbed within existing resources.

DSHS would be required to draft rules to implement the provisions of Senate Floor Amendment 3, and DSHS has indicated that any costs associated with implementation could be absorbed within existing agency resources.

**Technology**

In costs included above, DSHS indicates it will need to make a one-time modification to its existing Health Facility Licensing integrated system at a cost of $20,000 in fiscal year 2010.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 360 State Office of Administrative Hearings, 454 Department of Insurance, 529 Health and Human Services Commission, 537 State Health Services, Department of

**LBB Staff:** JOB, CL, JI, LL

**LEGISLATIVE BUDGET BOARD**
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 21, 2009**

**TO:** Honorable Jane Nelson, Chair, Senate Committee on Health & Human Services

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE:** **HB1357** by Isett (Relating to the regulation of freestanding emergency medical care facilities; providing an administrative penalty; creating an offense.), **Committee Report 2nd House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB1357, Committee Report 2nd House, Substituted: an impact of $0 through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

| Fiscal Year | Probable Net Positive/(Negative) Impact to General Revenue Related Funds |
|---|---|
| 2010 | $0 |
| 2011 | $0 |
| 2012 | $0 |
| 2013 | $0 |
| 2014 | $0 |

**All Funds, Five-Year Impact:**

| Fiscal Year | Probable (Cost) from *New General Revenue Dedicated: Freestanding Emergency Medical Care Facility Licensing Fund* | Probable Revenue Gain from *New General Revenue Dedicated: Freestanding Emergency Medical Care Facility Licensing Fund* | Change in Number of State Employees from FY 2009 |
|---|---|---|---|
| 2010 | ($472,653) | $559,250 | 4.5 |
| 2011 | ($181,992) | $231,125 | 2.5 |
| 2012 | ($181,992) | $231,125 | 2.5 |
| 2013 | ($181,992) | $231,125 | 2.5 |
| 2014 | ($181,992) | $231,125 | 2.5 |

**Fiscal Analysis**

The bill would implement some of the recommendations presented in the Legislative Budget Board's *Government Effectiveness and Efficiency Report* to the Eighty-first Legislature entitled, "Regulate Emergency Care Facilities to Standardize Quality of Care."

The bill would add Chapter 254, Freestanding Emergency Medical Care Facilities, to the Health and Safety Code. It would define a freestanding emergency medical facility and prohibit establishment or operation of a facility without a license. It would prevent a facility from holding itself out to the public as an emergency medical facility unless it holds a license. The bill would require the Executive

Commissioner of the Health and Human Services Commission (HHSC) by rule to establish a classification for a facility that is in continuous operation 24 hours per day and 7 days per week and classification for a facility that is in operation 7 days per week and at least 12 hours per day. The subsection and rules pertaining to facilities not in continuous operation would expire August 31, 2013.

The Department of State Health Services (DSHS) would be required to issue a license by September 1, 2010, if after inspection and investigation, it finds the applicant and facility meet the requirements and standards. DSHS would be allowed to inspect a facility to ensure compliance.

The bill would require that the licensing fee be paid annually on renewal of the license. The Executive Commissioner would be required to set fees in amounts reasonable and necessary to defray the cost of administration. The bill would require that fees be deposited in the State Treasury to the credit of the freestanding emergency medical care facility licensing fund and may be appropriated to the department only to administer and enforce this chapter.

The Executive Commissioner would be required to adopt rules by March 1, 2010 to implement the chapter including requirements for the issuance, renewal, denial, suspension, and revocation of a license, and minimum standards applicable to a facility.

The bill would allow a person to file a complaint with DSHS against a facility licensed under this chapter.

The bill would allow DSHS to deny, suspend, or revoke a license including through the use of an emergency suspension for a violation of the chapter or a rule, and would require these actions and the appeal to be governed by the procedures for a contested case hearing under Chapter 2001, Government Code, Administrative Procedure.

The bill would allow DSHS to petition a district court for a temporary restraining order against a freestanding emergency medical care facility. At DSHS' request, the Office of the Attorney General (OAG) would be required to institute and conduct a suit.

The bill would create a criminal penalty of a Class C misdemeanor for a person that establishes or operates a freestanding emergency medical care facility without a license. The bill would provide for administrative penalties. Proceedings to impose the penalty would be considered to be a contested case under Chapter 2001. If the person requests a hearing, DSHS would be required to refer the matter to the State Office of Administrative Hearings (SOAH) to conduct the hearing.

The bill would amend the Insurance Code to include a freestanding emergency medical care facility or comparable emergency facility in the list of facilities providing emergency care and require specified carriers to provide coverage of emergency care services provided in freestanding emergency medical care facilities or comparable emergency facilities or to provide reimbursement to a freestanding emergency medical care facility at preferred rates until a patient transfer.

**Methodology**

The bill would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in the bill would be subject to funds consolidation review by the current Legislature.

This analysis assumes the costs associated with adopting rules to regulate freestanding emergency medical care facilities could be absorbed by HHSC within existing resources.

DSHS assumes it would license 75 freestanding emergency care facilities. DSHS indicates there is no historical data to determine how many facilities would operate continuously and how many would operate fewer than 24 hours per day. DSHS indicates it would begin inspections on March 1, 2010.

To inspect and license facilities by September 1, 2010, DSHS indicates it would be required to hire a total of 6 new staff members during fiscal year 2010 including 4 nurses, 1 architect, and 1

administrative assistant. To conduct complaint investigations and resurveys in fiscal year 2011 and in future years, DSHS indicates it would require 2.5 Full-Time Equivalents including 1 nurse, 0.5 architect, and 1 administrative assistant. Total staffing costs including travel for on-site inspections are $449,153 in fiscal year 2010, and $178,492 in fiscal year 2011 and in future years. Staffing costs are phased-in for fiscal year 2010.

DSHS indicates it will need to make a modification to its existing Health Facility Licensing integrated system to include the new license type and functions associated with the license, and that the modification will involve a one-time cost in fiscal year 2010 of $20,000 (200 hours of contracted programming at $100 per hour).

SOAH reports that based on the estimated number of referrals, work could be absorbed within existing resources. However, because SOAH does not receive General Revenue for work performed for DSHS, it would bill DSHS at a rate of $100 per hour. DSHS indicates one case would be referred annually, at a cost of $3,500. The cost to DSHS and revenue gain to SOAH result in a net neutral fiscal impact.

The bill would allow DSHS to charge a fee for a license to operate a freestanding emergency care facility. DSHS assumes the same fee would be charged for facilities that operate continuously and facilities that do not operate continuously. Because the bill does not specify the amount of the fee, the Comptroller of Public Accounts could not estimate the revenue gain. However, if an initial licensing fee of $7,410 and a renewal fee of $3,035 were charged and 75 facilities were licensed as assumed by DSHS, the estimated annual revenue gain would be $555,750 in fiscal year 2010 and $227,625 in fiscal year 2011 and subsequent years in General Revenue-Dedicated Funds. Since the bill would require DSHS to generate revenues sufficient to cover the costs of regulation, this analysis assumes that the agency would adjust fees as necessary to cover any additional costs associated with the implementation of this bill.

OAG anticipates any legal work resulting from the passage of the bill, including additional complaints, investigations, or cases, could be reasonably absorbed within existing resources.

Based on the analysis of the Texas Department of Insurance (TDI), it is assumed that there would be a one-time revenue gain of $11,500 in the General Revenue Dedicated Account Fund 36 in fiscal year 2010 because the bill would result in additional form filings. Since General Revenue Dedicated Account Fund 36 is a self-leveling account, this analysis assumes all revenue generated would go toward fund balances or the maintenance tax would be set to recover a lower level of revenue the following year. It is also assumed that any costs realized by TDI from implementing the provisions of the bill could be absorbed within existing resources.

**Technology**

In costs included above, DSHS indicates it will need to make a one-time modification to its existing Health Facility Licensing integrated system at a cost of $20,000 in fiscal year 2010.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 360 State Office of Administrative Hearings, 454 Department of Insurance, 529 Health and Human Services Commission, 537 State Health Services, Department of

**LBB Staff:** JOB, CL, JI, LL

# LEGISLATIVE BUDGET BOARD
## Austin, Texas

## FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

**May 18, 2009**

**TO:** Honorable Jane Nelson, Chair, Senate Committee on Health & Human Services

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE:** **HB1357** by Isett (Relating to the regulation of freestanding emergency medical care facilities; providing an administrative penalty; creating an offense.), **As Engrossed**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB1357, As Engrossed: an impact of $0 through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

### General Revenue-Related Funds, Five-Year Impact:

| Fiscal Year | Probable Net Positive/(Negative) Impact to General Revenue Related Funds |
|---|---|
| 2010 | $0 |
| 2011 | $0 |
| 2012 | $0 |
| 2013 | $0 |
| 2014 | $0 |

### All Funds, Five-Year Impact:

| Fiscal Year | Probable (Cost) from *New General Revenue Dedicated: Freestanding Emergency Medical Care Facility Licensing Fund* | Probable Revenue Gain from *New General Revenue Dedicated: Freestanding Emergency Medical Care Facility Licensing Fund* | Change in Number of State Employees from FY 2009 |
|---|---|---|---|
| 2010 | ($472,653) | $559,250 | 4.5 |
| 2011 | ($181,992) | $231,125 | 2.5 |
| 2012 | ($181,992) | $231,125 | 2.5 |
| 2013 | ($181,992) | $231,125 | 2.5 |
| 2014 | ($181,992) | $231,125 | 2.5 |

### Fiscal Analysis

The bill would add Chapter 254, Freestanding Emergency Medical Care Facilities, to the Health and Safety Code. It would define a freestanding emergency medical facility and prohibit establishment or operation of a facility without a license. It would prevent a facility from holding itself out to the public as an emergency medical facility unless it holds a license. The bill would require the Executive Commissioner of the Health and Human Services Commission (HHSC) by rule to establish a classification and a license for a facility that is in continuous operation 24 hours per day and 7 days per week and for a facility that is not in continuous operation but is in operation at least 12 hours per day. The subsection and rules pertaining to facilities not in continuous operation would expire August 31, 2013.

The Department of State Health Services (DSHS) would be required to issue a license by September 1, 2010, if after inspection and investigation, it finds the applicant and facility meet the requirements and standards. DSHS would be allowed to inspect a facility to ensure compliance.

The bill would require that the licensing fee be paid annually on renewal of the license. The Executive Commissioner would be required to set fees in amounts reasonable and necessary to defray the cost of administration. The bill would require that fees be deposited in the State Treasury to the credit of the freestanding emergency medical care facility licensing fund and may be appropriated to the department only to administer and enforce this chapter.

The Executive Commissioner would be required to adopt rules by March 1, 2010 to implement the chapter including requirements for the issuance, renewal, denial, suspension, and revocation of a license, and minimum standards applicable to a facility.

The bill would allow DSHS to deny, suspend, or revoke a license including through the use of an emergency suspension for a violation of the chapter or a rule, and would require these actions and the appeal to be governed by the procedures for a contested case hearing under Chapter 2001, Government Code, Administrative Procedure.

The bill would allow DSHS to petition a district court for a temporary restraining order against a freestanding emergency medical care facility. At DSHS' request, the Office of the Attorney General (OAG) would be required to institute and conduct a suit.

The bill would create a criminal penalty of a Class C misdemeanor for a person that establishes or operates a freestanding emergency medical care facility without a license. The bill would provide for administrative penalties. Proceedings to impose the penalty would be considered to be a contested case under Chapter 2001. If the person requests a hearing, DSHS would be required to refer the matter to the State Office of Administrative Hearings (SOAH) to conduct the hearing.

The bill would amend the Insurance Code to include a freestanding emergency medical care facility or comparable emergency facility in the list of facilities providing emergency care and require specified carriers to provide coverage of emergency care services provided in freestanding emergency medical care facilities or comparable emergency facilities or to provide reimbursement to a freestanding emergency medical care facility at preferred rates until a patient transfer.

**Methodology**

This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in the bill would be subject to funds consolidation review by the current Legislature.

This analysis assumes the costs associated with adopting rules to regulate freestanding emergency medical care facilities could be absorbed by HHSC within existing resources.

DSHS assumes it would license 75 freestanding emergency care facilities. DSHS indicates there is no historical data to determine how many facilities would operate continuously and how many would operate fewer than 24 hours per day. DSHS indicates it would begin inspections on March 1, 2010. To inspect and license facilities by September 1, 2010, DSHS indicates it would be required to hire a total of 6 new staff members during fiscal year 2010 including 4 nurses, 1 architect, and 1 administrative assistant. To conduct complaint investigations and resurveys in fiscal year 2011 and in future years, DSHS indicates it would require 2.5 Full-Time Equivalents including 1 nurse, 0.5 architect, and 1 administrative assistant. Total staffing costs including travel for on-site inspections are $449,153 in fiscal year 2010, and $178,492 in fiscal year 2011 and in future years. Staffing costs are phased-in for fiscal year 2010.

DSHS indicates it will need to make a modification to its existing Health Facility Licensing integrated system to include the new license type and functions associated with the license, and that the

modification will involve a one-time cost in fiscal year 2010 of $20,000 (200 hours of contracted programming at $100 per hour).

SOAH reports that based on the estimated number of referrals, work could be absorbed within existing resources. However, because SOAH does not receive General Revenue for work performed for DSHS, it would bill DSHS at a rate of $100 per hour. DSHS indicates one case would be referred annually, at a cost of $3,500. The cost to DSHS and revenue gain to SOAH result in a net neutral fiscal impact.

The bill would allow DSHS to charge a fee for a license to operate a freestanding emergency care facility. DSHS assumes the same fee would be charged for facilities that operate continuously and facilities that do not operate continuously. Because the bill does not specify the amount of the fee, the Comptroller of Public Accounts could not estimate the revenue gain. However, if an initial licensing fee of $7,410 and a renewal fee of $3,035 were charged and 75 facilities were licensed as assumed by DSHS, the estimated annual revenue gain would be $555,750 in fiscal year 2010 and $227,625 in fiscal year 2011 and subsequent years in General Revenue-Dedicated Funds. Since the bill would require DSHS to generate revenues sufficient to cover the costs of regulation, this analysis assumes that the agency would adjust fees as necessary to cover any additional costs associated with the implementation of this bill.

OAG anticipates any legal work resulting from the passage of the bill, including additional complaints, investigations, or cases, could be reasonably absorbed within existing resources.

Based on the analysis of the Texas Department of Insurance (TDI), it is assumed that there would be a one-time revenue gain of $11,500 in the General Revenue Dedicated Account Fund 36 in fiscal year 2010 because the bill would result in additional form filings. Since General Revenue Dedicated Account Fund 36 is a self-leveling account, this analysis assumes all revenue generated would go toward fund balances or the maintenance tax would be set to recover a lower level of revenue the following year. It is also assumed that any costs realized by TDI from implementing the provisions of the bill could be absorbed within existing resources.

**Technology**

In costs included above, DSHS indicates it will need to make a one-time modification to its existing Health Facility Licensing integrated system at a cost of $20,000 in fiscal year 2010.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 360 State Office of Administrative Hearings, 454 Department of Insurance, 529 Health and Human Services Commission, 537 State Health Services, Department of

**LBB Staff:** JOB, CL, JI, LL

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 27, 2009

**TO:** Honorable Lois W. Kolkhorst, Chair, House Committee on Public Health

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE:** **HB1357** by Isett (Relating to regulation of freestanding emergency medical care facilities; providing an administrative penalty; creating an offense.), **Committee Report 1st House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB1357, Committee Report 1st House, Substituted: an impact of $0 through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

| Fiscal Year | Probable Net Positive/(Negative) Impact to General Revenue Related Funds |
|---|---|
| 2010 | $0 |
| 2011 | $0 |
| 2012 | $0 |
| 2013 | $0 |
| 2014 | $0 |

**All Funds, Five-Year Impact:**

| Fiscal Year | Probable (Cost) from *New General Revenue Dedicated: Freestanding Emergency Medical Care Facility Licensing Fund* | Probable Revenue Gain from *New General Revenue Dedicated: Freestanding Emergency Medical Care Facility Licensing Fund* |
|---|---|---|
| 2010 | ($472,653) | $559,250 |
| 2011 | ($181,992) | $231,125 |
| 2012 | ($181,992) | $231,125 |
| 2013 | ($181,992) | $231,125 |
| 2014 | ($181,992) | $231,125 |

**Fiscal Analysis**

The bill would add Chapter 254, Freestanding Emergency Medical Care Facilities, to the Health and Safety Code. It would define a freestanding emergency medical facility and prohibit establishment or operation of a facility without a license. It would prevent a facility from holding itself out to the public as an emergency medical facility unless it holds a license. The bill would require the Executive Commissioner of the Health and Human Services Commission (HHSC) by rule to establish a classification and a license for a facility that is in continuous operation 24 hours per day and 7 days per week and for a facility that is not in continuous operation but is in operation at least 12 hours per day. The subsection and rules pertaining to facilities not in continuous operation would expire August 31, 2013.

The Department of State Health Services (DSHS) would be required to issue a license by September 1, 2010, if after inspection and investigation, it finds the applicant and facility meet the requirements and standards. DSHS would be allowed to inspect a facility to ensure compliance.

The bill would require that the licensing fee be paid annually on renewal of the license. The Executive Commissioner would be required to set fees in amounts reasonable and necessary to defray the cost of administration. The bill would require that fees be deposited in the State Treasury to the credit of the freestanding emergency medical care facility licensing fund and may be appropriated to the department only to administer and enforce this chapter.

The Executive Commissioner would be required to adopt rules by March 1, 2010 to implement the chapter including requirements for the issuance, renewal, denial, suspension, and revocation of a license, and minimum standards applicable to a facility.

The bill would allow DSHS to deny, suspend, or revoke a license including through the use of an emergency suspension for a violation of the chapter or a rule, and would require these actions and the appeal to be governed by the procedures for a contested case hearing under Chapter 2001, Government Code, Administrative Procedure.

The bill would allow DSHS to petition a district court for a temporary restraining order against a freestanding emergency medical care facility. At DSHS' request, the Office of the Attorney General (OAG) would be required to institute and conduct a suit.

The bill would create a criminal penalty of a Class C misdemeanor for a person that establishes or operates a freestanding emergency medical care facility without a license. The bill would provide for administrative penalties. Proceedings to impose the penalty would be considered to be a contested case under Chapter 2001. If the person requests a hearing, DSHS would be required to refer the matter to the State Office of Administrative Hearings (SOAH) to conduct the hearing.

The bill would amend the Insurance Code to include a freestanding emergency medical care facility or comparable emergency facility in the list of facilities providing emergency care and require specified carriers to provide coverage of emergency care services provided in freestanding emergency medical care facilities or comparable emergency facilities or to provide reimbursement to a freestanding emergency medical care facility at preferred rates until a patient transfer.

**Methodology**

This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in the bill would be subject to funds consolidation review by the current Legislature.

This analysis assumes the costs associated with adopting rules to regulate freestanding emergency medical care facilities could be absorbed by HHSC within existing resources.

DSHS assumes it would license 75 freestanding emergency care facilities. DSHS indicates there is no historical data to determine how many facilities would operate continuously and how many would operate fewer than 24 hours per day. DSHS indicates it would begin inspections on March 1, 2010. To inspect and license facilities by September 1, 2010, DSHS indicates it would be required to hire a total of 6 new staff members during fiscal year 2010 including 4 nurses, 1 architect, and 1 administrative assistant. To conduct complaint investigations and resurveys in fiscal year 2011 and in future years, DSHS indicates it would require 2.5 Full-Time Equivalents including 1 nurse, 0.5 architect, and 1 administrative assistant. Total staffing costs including travel for on-site inspections are $449,153 in fiscal year 2010, and $178,492 in fiscal year 2011 and in future years. Staffing costs are phased-in for fiscal year 2010.

DSHS indicates it will need to make a modification to its existing Health Facility Licensing integrated system to include the new license type and functions associated with the license, and that the

modification will involve a one-time cost in fiscal year 2010 of $20,000 (200 hours of contracted programming at $100 per hour).

SOAH reports that based on the estimated number of referrals, work could be absorbed within existing resources. However, because SOAH does not receive General Revenue for work performed for DSHS, it would bill DSHS at a rate of $100 per hour. DSHS indicates one case would be referred annually, at a cost of $3,500. The cost to DSHS and revenue gain to SOAH result in a net neutral fiscal impact.

The bill would allow DSHS to charge a fee for a license to operate a freestanding emergency care facility. DSHS assumes the same fee would be charged for facilities that operate continuously and facilities that do not operate continuously. Because the bill does not specify the amount of the fee, the Comptroller of Public Accounts could not estimate the revenue gain. However, if an initial licensing fee of $7,410 and a renewal fee of $3,035 were charged and 75 facilities were licensed as assumed by DSHS, the estimated annual revenue gain would be $555,750 in fiscal year 2010 and $227,625 in fiscal year 2011 and subsequent years in General Revenue-Dedicated Funds. Since the bill would require DSHS to generate revenues sufficient to cover the costs of regulation, this analysis assumes that the agency would adjust fees as necessary to cover any additional costs associated with the implementation of this bill.

OAG anticipates any legal work resulting from the passage of the bill, including additional complaints, investigations, or cases, could be reasonably absorbed within existing resources.

Based on the analysis of the Texas Department of Insurance (TDI), it is assumed that there would be a one-time revenue gain of $11,500 in the General Revenue Dedicated Account Fund 36 in fiscal year 2010 because the bill would result in additional form filings. Since General Revenue Dedicated Account Fund 36 is a self-leveling account, this analysis assumes all revenue generated would go toward fund balances or the maintenance tax would be set to recover a lower level of revenue the following year. It is also assumed that any costs realized by TDI from implementing the provisions of the bill could be absorbed within existing resources.

**Technology**

In costs included above, DSHS indicates it will need to make a one-time modification to its existing Health Facility Licensing integrated system at a cost of $20,000 in fiscal year 2010.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 360 State Office of Administrative Hearings, 454 Department of Insurance, 529 Health and Human Services Commission, 537 State Health Services, Department of

**LBB Staff:** JOB, CL, JI, LL

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

March 30, 2009

**TO:** Honorable Lois W. Kolkhorst, Chair, House Committee on Public Health

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE:** **HB1357** by Isett (Relating to the regulation of freestanding emergency medical care facilities; providing an administrative penalty; creating an offense.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB1357, As Introduced: an impact of $0 through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

| Fiscal Year | Probable Net Positive/(Negative) Impact to General Revenue Related Funds |
|---|---|
| 2010 | $0 |
| 2011 | $0 |
| 2012 | $0 |
| 2013 | $0 |
| 2014 | $0 |

**All Funds, Five-Year Impact:**

| Fiscal Year | Probable Revenue Gain from *New General Revenue Dedicated: Freestanding Emergency Medical Care Facility Licensing Fund* | Probable (Cost) from *New General Revenue Dedicated: Freestanding Emergency Medical Care Facility Licensing Fund* |
|---|---|---|
| 2010 | $559,250 | ($472,653) |
| 2011 | $231,125 | ($181,992) |
| 2012 | $231,125 | ($181,992) |
| 2013 | $231,125 | ($181,992) |
| 2014 | $231,125 | ($181,992) |

**Fiscal Analysis**

The bill would add Chapter 254, Freestanding Emergency Medical Care Facilities, to the Health and Safety Code. It would define a freestanding emergency medical facility and prohibit establishment or operation of a facility without a license. The Department of State Health Services (DSHS) would be required to issue a license by September 1, 2010, if after inspection and investigation, it finds the applicant and facility meet the requirements and standards. DSHS would be allowed to inspect a facility to ensure compliance. The licensing fee must be paid annually on renewal of the license. The Executive Commissioner of the Health and Human Services Commission (HHSC) would be required to set fees in amounts reasonable and necessary to defray the cost of administration. All fees would be deposited in the State Treasury to the credit of the freestanding emergency medical care facility licensing fund and may be appropriated to the department only to administer and enforce this chapter.

The Executive Commissioner would be required to adopt rules to implement the chapter by March 1, 2010 including requirements for the issuance, renewal, denial, suspension, and revocation of a license, and minimum standards applicable to a facility.

The bill would allow DSHS to deny, suspend, or revoke a license including through the use of an emergency suspension for a violation of the chapter or a rule, and would require these actions and the appeal to be governed by the procedures for a contested case hearing under Chapter 2001, Government Code, Administrative Procedure.

DSHS may petition a district court for a temporary restraining order against a freestanding emergency medical care facility. At DSHS' request, the Office of the Attorney General (OAG) would be required to institute and conduct a suit.

The bill would create a criminal penalty of a Class C misdemeanor for a person that establishes or operates a freestanding emergency medical care facility without a license. The bill would provide for administrative penalties. Proceedings to impose the penalty would be considered to be a contested case under Chapter 2001. If the person requests a hearing, DSHS would be required to refer the matter to the State Office of Administrative Hearings (SOAH) to conduct the hearing.

The bill would amend the Insurance Code to include a freestanding emergency medical care facility or comparable emergency facility in the list of facilities providing emergency care and require specified carriers to provide coverage of emergency care services provided in freestanding emergency medical care facilities or comparable emergency facilities or to provide reimbursement to a freestanding emergency medical care facility at preferred rates until a patient transfer.

**Methodology**

This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in the bill would be subject to funds consolidation review by the current Legislature.

This analysis assumes the costs associated with adopting rules to regulate freestanding emergency medical care facilities could be absorbed by HHSC within existing resources.

DSHS assumes it would license 75 freestanding emergency care facilities. DSHS indicates it would begin inspections on March 1, 2010. To inspect and license facilities by September 1, 2010, DSHS indicates it would be required to hire a total of 6 new staff members during fiscal year 2010 including 4 nurses, 1 architect, and 1 administrative assistant. To conduct complaint investigations and resurveys in fiscal year 2011 and in future years, DSHS indicates it would require 2.5 Full-Time Equivalents including 1 nurse, 0.5 architect, and 1 administrative assistant. Total staffing costs including travel for on-site inspections are $449,153 in fiscal year 2010, and $178,492 in fiscal year 2011 and in future years. Staffing costs are phased-in for fiscal year 2010.

DSHS indicates it will need to make a modification to its existing Health Facility Licensing integrated system to include the new license type and functions associated with the license, and that the modification will involve a one-time cost in fiscal year 2010 of $20,000 (200 hours of contracted programming at $100 per hour).

SOAH reports that based on the estimated number of referrals, work could be absorbed within existing resources. However, because SOAH does not receive General Revenue for work performed for DSHS, it would bill DSHS at a rate of $100 per hour. DSHS indicates one case would be referred annually, at a cost of $3,500. The cost to DSHS and revenue gain to SOAH result in a net neutral fiscal impact.

The bill would allow DSHS to charge a fee for a license to operate a freestanding emergency care facility. Because the bill does not specify the amount of the fee, the Comptroller of Public Accounts

could not estimate the revenue gain. However, if an initial licensing fee of $7,410 and a renewal fee of $3,035 were charged and 75 facilities were licensed as assumed by DSHS, the estimated annual revenue gain would be $555,750 in fiscal year 2010 and $227,625 in fiscal year 2011 and subsequent years in General Revenue-Dedicated Funds. Since the bill would require DSHS to generate revenues sufficient to cover the costs of regulation, this analysis assumes that the agency would adjust fees as necessary to cover any additional costs associated with the implementation of the bill.

The Office of the Attorney General anticipates any legal work resulting from the passage of the bill, including additional complaints, investigations, or cases, could be reasonably absorbed within existing resources.

Based on the analysis of the Texas Department of Insurance (TDI), it is assumed that there would be a one-time revenue gain of $11,500 in the General Revenue Dedicated Account Fund 36 in fiscal year 2010 because the bill would result in additional form filings. Since General Revenue Dedicated Account Fund 36 is a self-leveling account, this analysis assumes all revenue generated would go toward fund balances or the maintenance tax would be set to recover a lower level of revenue the following year. It is also assumed that any costs realized by TDI from implementing the provisions of the bill could be absorbed within existing resources.

This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in the bill would be subject to funds consolidation review by the current Legislature.

**Technology**

In costs included above, DSHS indicates it will need to make a one-time modification to its existing Health Facility Licensing integrated system at a cost of $20,000 in fiscal year 2010 (200 hours of contracted programming at $100 per hour).

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 360 State Office of Administrative Hearings, 454 Department of Insurance, 537 State Health Services, Department of

**LBB Staff:** JOB, CL, JI, LL