House Bill 1357
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION	SENATE VERSION	CONFERENCE
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	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). [Section 254.002-254.050 reserved for expansion] SUBCHAPTER B. LICENSING Sec. 254.051. LICENSE REQUIRED. (a) Excepts 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	

HOUSE VERSION	SENATE VERSION	CONFERENCE
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.	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. (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.	
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	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	

HOUSE VERSION	SENATE VERSION	CONFERENCE
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	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 and 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	
(6) a licensed ambulatory surgical center.	(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.	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.	(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.	
(c) The application must contain evidence that there is at least one physician and one nurse on the staff of the	(_) The application must contain evidence that there is at least one physician and one nurse on the staff of the	

HOUSE VERSION	SENATE VERSION	CONFERENCE
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.	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.	

HOUSE VERSION	SENATE VERSION	CONFERENCE
[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	[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	

HOUSE VERSION	SENATE VERSION	CONFERENCE
	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 name 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.	
(11) transfer protocols for patients requiring advanced medical care at a hospital.	(_) transfer protocols for patients requiring advanced medical care at a hospital; (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. (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.	
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	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	

HOUSE VERSION	SENATE VERSION	CONFERENCE
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.	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.	

HOUSE VERSION	SENATE VERSION	CONFERENCE
[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.	[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.	

HOUSE VERSION	SENATE VERSION	CONFERENCE
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;	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 care 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;	

HOUSE VERSION	SENATE VERSION	CONFERENCE
(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	(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	

HOUSE VERSION	SENATE VERSION	CONFERENCE
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	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	

HOUSE VERSION	SENATE VERSION	CONFERENCE
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	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	

HOUSE VERSION	SENATE VERSION	CONFERENCE
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	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	

HOUSE VERSION	SENATE VERSION	CONFERENCE
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	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 judgement 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	

HOUSE VERSION	SENATE VERSION	CONFERENCE
the release of the bond after the person pays the reduced amount.	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.	Same as House version.	
SECTION 3. Section 1271.155(b), Insurance Code, is amended to read as follows: (b) A health care plan of a health maintenance	Same as House version.	

HOUSE VERSION	SENATE VERSION	CONFERENCE
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.	Same as House version.	
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	Same as House version.	

HOUSE VERSION	SENATE VERSION	CONFERENCE
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.		

HOUSE VERSION	SENATE VERSION	CONFERENCE
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 6. 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.	
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	Same as House version.	

HOUSE VERSION	SENATE VERSION	CONFERENCE
by this Act, takes effect September 1, 2010.		
	The following rows were presented as the engrossed version of Senate Bill 2151 relating to ambulatory surgical centers and to the provision of services at those centers by certain designated physician groups.	
No equivalent provision.	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.	

HOUSE VERSION	SENATE VERSION	CONFERENCE
No equivalent provision.	SECTION __. The heading to Section 243.003, Health and Safety Code, is amended to read as follows: Sec. 243.003. LICENSE REQUIRED; USE AGREEMENTS.	
No equivalent provision.	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.	

HOUSE VERSION	SENATE VERSION	CONFERENCE
	(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.	
No equivalent provision.	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.	
No equivalent provision.	SECTION __. Section 1301.001, Insurance Code, is	

HOUSE VERSION	SENATE VERSION	CONFERENCE
	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.	
No equivalent provision.	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.	
No equivalent provision.	SECTION __. The change in law made by this Act	

HOUSE VERSION	SENATE VERSION	CONFERENCE
	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.	
	The following rows were presented as the engrossed version of Senate Bill 586 relating to the operation of certain managed care plans regarding out-of-network health care providers.	
No equivalent provision.	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	

HOUSE VERSION	SENATE VERSION	CONFERENCE
	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	

HOUSE VERSION	SENATE VERSION	CONFERENCE
	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	

HOUSE VERSION	SENATE VERSION	CONFERENCE
	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.	