

By: Zaffirini

S.B. No. 57

A BILL TO BE ENTITLED

AN ACT

relating to the licensing and regulation of post-acute care
acquired brain injury rehabilitation facilities; providing
penalties.

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 248A to read as follows:

CHAPTER 248A. POST-ACUTE CARE ACQUIRED BRAIN INJURY

REHABILITATION FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 248A.001. SHORT TITLE. This chapter may be cited as
the Post-Acute Care Acquired Brain Injury Rehabilitation Facility
Licensing Act.

Sec. 248A.002. DEFINITIONS. In this chapter:

(1) "Brain injury" means an acquired injury to the
brain. The term does not include brain dysfunction caused by
congenital or degenerative disorders or birth trauma. The term
includes brain injuries caused by anoxia due to near drowning,
stroke, aneurysm, tumors, toxins, infection, or metabolic causes.

(2) "Commissioner" means the commissioner of state
health services.

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

(4) "Executive commissioner" means the executive

commissioner of the Health and Human Services Commission.

(5) "Facility" means an institution or establishment that provides a continuum of post-acute rehabilitation services primarily to medically stable persons who have suffered an acquired brain injury.

(6) "Nursing care" means services provided by nursing personnel as prescribed by a physician, including services to:

(A) promote and maintain health;

(B) prevent illness and disability;

(C) manage health care during acute and chronic phases of illness;

(D) provide guidance and counseling of individuals and families; and

(E) provide referrals to physicians, other health care providers, and community resources when appropriate.

(7) "Patient" means an individual accepted for inpatient or outpatient services in a post-acute care acquired brain injury rehabilitation facility.

(8) "Services" means the provision of care, assistance, or treatment by facility personnel, volunteers, or other qualified individuals, agencies, or staff of an organization or other entity to meet a patient's medical, nursing, social, spiritual, and emotional needs.

Sec. 248A.003. EXEMPTIONS. (a) This chapter does not apply to:

(1) a home and community support services agency licensed under Chapter 142;

1 (2) a person licensed under Chapter 241;

2 (3) an institution licensed under Chapter 242;

3 (4) an ambulatory surgical center licensed under
4 Chapter 243;

5 (5) a birthing center licensed under Chapter 244;

6 (6) a facility licensed under Chapter 245 or Chapter
7 247;

8 (7) a child-care institution, foster group home,
9 foster family home, or child-placing agency, for children in foster
10 care or other residential care who are under the conservatorship of
11 the Department of Family and Protective Services; or

12 (8) a person providing medical or nursing care or
13 services under a license or permit issued under other state law.

14 (b) This chapter does not require an entity listed in
15 Subsection (a) to obtain an additional license under this chapter
16 to provide services authorized under another license issued by this
17 state.

18 [Sections 248A.004-248A.050 reserved for expansion]

19 SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS

20 Sec. 248A.051. LICENSE REQUIRED; QUALIFICATIONS. (a) A
21 person may not establish or operate a post-acute care acquired
22 brain injury rehabilitation facility unless the person holds a
23 license issued under this chapter.

24 (b) To protect the public health and safety, the executive
25 commissioner shall establish qualifications for holding a license
26 under this chapter. The qualifications must require the facility
27 to hold an accreditation for post-acute providers from the

1 Commission on Accreditation of Rehabilitation Facilities or
2 another nationally recognized accreditation organization approved
3 by the executive commissioner.

4 Sec. 248A.052. APPLICATION. (a) An applicant for a license
5 must submit an application to the department on a form prescribed by
6 the department and in accordance with executive commissioner rules.

7 (b) Each application must be accompanied by a nonrefundable
8 license fee in the amount set by the executive commissioner under
9 Section 248A.054(a).

10 (c) The department may require that an application be
11 approved by the local health authority or other local official for
12 compliance with municipal ordinances on building construction,
13 fire prevention, and sanitation.

14 Sec. 248A.053. ISSUANCE AND RENEWAL OF LICENSE. (a) The
15 department shall issue a license to an applicant if on inspection
16 and investigation it finds that the applicant meets the
17 requirements of this chapter and the rules adopted by the executive
18 commissioner.

19 (b) A license shall be renewed at the times and in
20 accordance with the rules established by the executive
21 commissioner.

22 Sec. 248A.054. FEES. (a) The executive commissioner shall
23 establish a license application fee in the amount reasonable and
24 necessary to cover the cost of administering this chapter.

25 (b) The executive commissioner may establish other
26 reasonable and necessary fees in amounts that are adequate, with
27 the license application and license renewal fees, to collect

1 sufficient revenue to meet the expenses necessary to administer
2 this chapter. The fees may include construction plan review and
3 inspection fees.

4 (c) All fees collected under this chapter are
5 nonrefundable.

6 (d) All fees received by the department shall be deposited
7 to the credit of the general revenue fund and may be appropriated
8 only to the department to administer this chapter.

9 Sec. 248A.055. NONTRANSFERABILITY; POSTING. (a) A license
10 issued under this chapter is not transferable or assignable.

11 (b) A facility shall post in plain sight the license issued
12 under this chapter.

13 Sec. 248A.056. DUTIES OF EXECUTIVE COMMISSIONER. (a) The
14 executive commissioner shall adopt rules necessary to implement
15 this chapter. The rules must establish minimum standards for
16 facilities to protect the health and safety of facility patients
17 and to protect the public, including standards relating to:

18 (1) the issuance, renewal, denial, suspension, and
19 revocation of the license required by this chapter;

20 (2) the qualifications, duties, and supervision of
21 professional and nonprofessional personnel and volunteers,
22 including a requirement that a manager of a facility be a certified
23 brain injury specialist;

24 (3) staff-to-patient ratios, which must require one
25 staff person for every six patients during the day and a minimum of
26 one staff person for every eight patients overnight;

27 (4) post-acute care acquired brain injury

1 transitional residential services provided by a license holder,
2 including a requirement that at least 20 hours each week of therapy
3 by licensed professionals be made available for each inpatient or
4 day treatment patient and must include the disciplines required
5 under Subsection (b);

6 (5) the organizational structure, lines of authority,
7 delegation of responsibility, and operation of a facility;

8 (6) records of services kept by the license holder,
9 including the disposal or destruction of those records;

10 (7) safety, fire prevention, and sanitation
11 provisions;

12 (8) transfer of patients in a medically appropriate
13 manner from or to a facility;

14 (9) construction plan approval and inspection;

15 (10) training for employees who do not hold a license
16 as a health care practitioner and who will be delivering care to
17 patients, including a requirement for at least 16 hours of
18 orientation training, 24 hours of observation training, and
19 evidence of demonstrated competency or proficiency from the
20 training;

21 (11) annual continuing education of at least 12 hours
22 for employees;

23 (12) treatment of minors; and

24 (13) any other aspects of a facility as necessary to
25 protect the health and safety of facility patients and to protect
26 the public.

27 (b) A facility shall provide regular representation of

services in the following medical and therapeutic disciplines:

- (1) psychiatry;
- (2) neurology;
- (3) nursing;
- (4) physical therapy;
- (5) occupational therapy;
- (6) speech and language pathology;
- (7) neuropsychology;
- (8) psychology and counseling;
- (9) case management; and
- (10) dietetics.

(c) A facility may also provide services in the following disciplines:

- (1) applied behavioral analysis;
- (2) education and special education;
- (3) recreational therapy;
- (4) vocational rehabilitation counseling;
- (5) counseling by licensed practicing counselors;
- (6) clinical psychology;
- (7) rehabilitation psychology engineering;
- (8) behavior analysis;
- (9) internal medicine;
- (10) social work;
- (11) neurosurgery;
- (12) psychotherapy;
- (13) otolaryngology; and
- (14) education specialists.

1 (d) A facility may provide the following services, and if
2 provided, the services must be under a physician's order and
3 supervision:

4 (1) audiology;

5 (2) exercise physiology and fitness;

6 (3) ophthalmology;

7 (4) neurooptometry; and

8 (5) endocrinology.

9 (e) Subsection (a) does not authorize the executive
10 commissioner to establish the qualifications of licensed health
11 care providers or permit the executive commissioner to authorize
12 persons to provide health care services who are not authorized to
13 provide those services under other state law.

14 Sec. 248A.057. CONSTRUCTION STANDARDS. (a) If there are no
15 local regulations in effect or enforced in the area in which a
16 facility is located, the facility's construction must conform to
17 the minimum standards established by the executive commissioner.

18 (b) Construction of a facility is subject to construction
19 plan approval by the department.

20 Sec. 248A.058. INSPECTIONS; INVESTIGATIONS. (a) The
21 department may inspect a facility and its records at reasonable
22 times as necessary to ensure compliance with this chapter.

23 (b) The department shall investigate each complaint
24 received regarding a facility.

25 Sec. 248A.059. CONTINUUM OF TREATMENT. A facility shall
26 make available to persons who have suffered an acquired brain
27 injury a continuum of treatment that includes:

1 (1) inpatient residential rehabilitation;
2 (2) day treatment rehabilitation; and
3 (3) outpatient rehabilitation or home and community
4 rehabilitation.

5 [Sections 248A.060-248A.100 reserved for expansion]

6 SUBCHAPTER C. GENERAL ENFORCEMENT

7 Sec. 248A.101. LICENSE DENIAL, SUSPENSION, PROBATION, OR
8 REVOCAION. (a) The department may deny, revoke, or suspend a
9 license issued under this chapter for a violation of this chapter or
10 the rules adopted under this chapter.

11 (b) Except as provided by Section 248A.102, the procedures
12 by which the department denies, revokes, or suspends a license and
13 by which those actions are appealed are governed by the
14 department's rules for a contested case hearing and by Chapter
15 2001, Government Code.

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

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

5 Sec. 248A.102. EMERGENCY SUSPENSION. (a) The department
6 may issue an emergency order to suspend any license issued under
7 this chapter if the department has reasonable cause to believe that
8 the conduct of a license holder creates an immediate danger to the
9 public health and safety.

10 (b) An emergency suspension is effective immediately
11 without a hearing on notice to the license holder.

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

17 (d) The hearing and any appeal are governed by department
18 rules for a contested case hearing and by Chapter 2001, Government
19 Code.

20 Sec. 248A.103. INJUNCTION. (a) The department may request
21 that the attorney general petition a district court to restrain a
22 license holder or other person from continuing to violate this
23 chapter or any rule adopted by the executive commissioner under
24 this chapter. Venue for a suit for injunctive relief is in Travis
25 County.

26 (b) On application for injunctive relief and a finding that
27 a license holder or other person has violated this chapter or

executive commissioner rules, the district court shall grant the
injunctive relief that the facts warrant.

Sec. 248A.104. CIVIL PENALTY. (a) A license holder or
person who violates this chapter or a rule adopted by the executive
commissioner under this chapter is liable for a civil penalty, to be
imposed by a district court, of not more than \$1,000 for each day of
violation.

(b) The attorney general may sue to collect the penalty and
may recover reasonable expenses, including attorney's fees,
incurred in recovering the penalty.

(c) All penalties collected under this section shall be
deposited to the credit of the general revenue fund.

Sec. 248A.105. CRIMINAL PENALTY. (a) A person who
knowingly establishes or operates a facility without a license
issued under this chapter commits an offense.

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

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

[Sections 248A.106-248A.150 reserved for expansion]

SUBCHAPTER D. ADMINISTRATIVE PENALTY

Sec. 248A.151. IMPOSITION OF PENALTY. The commissioner 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.

Sec. 248A.152. AMOUNT OF PENALTY. (a) 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.

(b) 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.

Sec. 248A.153. REPORT AND NOTICE OF VIOLATION AND PENALTY.

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

(b) The notice 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.

Sec. 248A.154. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice sent under Section 248A.153, the person in writing may:

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

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

5 (b) If the person accepts the determination and recommended
6 penalty or if the person fails to respond to the notice, the
7 commissioner by order shall approve the determination and impose
8 the recommended penalty.

9 Sec. 248A.155. HEARING. (a) If the person requests a
10 hearing, the commissioner shall refer the matter to the State
11 Office of Administrative Hearings, which shall promptly set a
12 hearing date and give written notice of the time and place of the
13 hearing to the person. An administrative law judge of the State
14 Office of Administrative Hearings shall conduct the hearing.

15 (b) The administrative law judge shall make findings of fact
16 and conclusions of law and promptly issue to the commissioner a
17 proposal for a decision about the occurrence of the violation and
18 the amount of a proposed penalty.

19 Sec. 248A.156. DECISION BY COMMISSIONER. (a) Based on the
20 findings of fact, conclusions of law, and proposal for a decision,
21 the commissioner by order may:

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

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

25 (b) The notice of the commissioner's order under Subsection
26 (a) that is sent to the person in accordance with Chapter 2001,
27 Government Code, must include a statement of the right of the person

1 to judicial review of the order.

2 Sec. 248A.157. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.
3 Not later than the 30th day after the date the order of the
4 commissioner under Section 248A.156 that imposes an administrative
5 penalty becomes final, the person shall:

6 (1) pay the penalty; or
7 (2) file a petition for judicial review of the
8 commissioner's order contesting the occurrence of the violation,
9 the amount of the penalty, or both.

10 Sec. 248A.158. STAY OF ENFORCEMENT OF PENALTY. (a) Within
11 the period prescribed by Section 248A.157, a person who files a
12 petition for judicial review may:

13 (1) stay enforcement of the penalty by:
14 (A) paying the penalty to the court for placement
15 in an escrow account; or
16 (B) giving the court a supersedeas bond approved
17 by the court that:

18 (i) is for the amount of the penalty; and
19 (ii) is effective until all judicial review
20 of the commissioner's order is final; or

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

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

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

1 (b) If the commissioner receives a copy of an affidavit
2 under Subsection (a)(2), the commissioner may file with the court,
3 not later than the fifth day after the date the copy is received, a
4 contest to the affidavit. The court shall hold a hearing on the
5 facts alleged in the affidavit as soon as practicable and shall stay
6 the enforcement of the penalty on finding that the alleged facts are
7 true. The person who files an affidavit has the burden of proving
8 that the person is financially unable to pay the penalty and to give
9 a supersedeas bond.

10 Sec. 248A.159. COLLECTION OF PENALTY. (a) If the person
11 does not pay the penalty and the enforcement of the penalty is not
12 stayed, the penalty may be collected.

13 (b) The attorney general may sue to collect the penalty and
14 may recover reasonable expenses, including attorney's fees,
15 incurred in recovering the penalty.

16 (c) A penalty collected under this subchapter shall be
17 deposited in the state treasury in the general revenue fund.

18 Sec. 248A.160. DECISION BY COURT. (a) If the court
19 sustains the finding that a violation occurred, the court may
20 uphold or reduce the amount of the penalty and order the person to
21 pay the full or reduced amount of the penalty.

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

25 Sec. 248A.161. REMITTANCE OF PENALTY AND INTEREST. (a) If
26 the person paid the penalty and if the amount of the penalty is
27 reduced or the penalty is not upheld by the court, the court shall

1 order, when the court's judgment becomes final, that the
2 appropriate amount plus accrued interest be remitted to the person
3 not later than the 30th day after the date that the judgment of the
4 court becomes final.

5 (b) The interest accrues at the rate charged on loans to
6 depository institutions by the New York Federal Reserve Bank.

7 (c) The interest shall be paid for the period beginning on
8 the date the penalty is paid and ending on the date the penalty is
9 remitted.

10 Sec. 248A.162. RELEASE OF BOND. (a) If the person gave a
11 supersedeas bond and the penalty is not upheld by the court, the
12 court shall order, when the court's judgment becomes final, the
13 release of the bond.

14 (b) If the person gave a supersedeas bond and the amount of
15 the penalty is reduced, the court shall order the release of the
16 bond after the person pays the reduced amount.

17 Sec. 248A.163. ADMINISTRATIVE PROCEDURE. A proceeding to
18 impose the penalty is considered to be a contested case under
19 Chapter 2001, Government Code.

20 SECTION 2. (a) Not later than September 1, 2012, the
21 executive commissioner of the Health and Human Services Commission
22 shall adopt the rules and standards required by Chapter 248A,
23 Health and Safety Code, as added by this Act.

24 (b) Notwithstanding Section 248A.051, Health and Safety
25 Code, as added by this Act, a post-acute care acquired brain injury
26 rehabilitation facility is not required to hold a license under
27 Chapter 248A until September 1, 2012.

1 SECTION 3. (a) Except as provided by Subsection (b) of this
2 section, this Act takes effect September 1, 2011.

3 (b) Subchapters C and D, Chapter 248A, Health and Safety
4 Code, as added by this Act, take effect September 1, 2012.