

## **BILL ANALYSIS**

C.S.S.B. 424  
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Public Health  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Last year, interested parties report, an owner of six rural hospitals in Texas was found guilty of fraudulently charging over \$1 million to the Medicare program. This fraudulent act, along with other acts of mismanagement and neglect, led to the closure of three of those hospitals. Such a closure has the potential to limit access to life-saving care for the citizens of rural Texas. C.S.S.B. 424 seeks to address this issue by amending current law relating to the licensing and regulation of hospitals in Texas.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 of this bill.

### **ANALYSIS**

C.S.S.B. 424 amends the Health and Safety Code, including provisions amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, to authorize the Department of State Health Services (DSHS), in accordance with department rules, to share with the office of inspector general of the Health and Human Services Commission (HHSC) information relating to an applicant for a hospital license under the Texas Hospital Licensing Law or a hospital license holder. The bill requires any confidential information shared by DSHS to remain confidential and specifies that such information is not subject to disclosure under state public information law. The bill requires the executive commissioner of HHSC, not later than May 1, 2016, to adopt the rules necessary for such information sharing.

C.S.S.B. 424 lowers from 25 percent to 5 percent the minimum amount of ownership interest in a corporation applying for a hospital license for which the license application must include the owner's name and social security number. The bill revises a provision authorizing DSHS to make any inspection of a hospital it considers necessary to instead require DSHS to conduct an inspection of each licensed hospital as provided by the bill. The bill requires DSHS to adopt a schedule for the inspection of each such licensed hospital so that 10 percent of the hospitals, or as near as possible to 10 percent, are scheduled to be inspected each year. The bill requires DSHS, in scheduling such a hospital for inspection, to consider an accreditation, validation, or other full survey and to prioritize that inspection in accordance with risk factors DSHS considers important. The bill requires DSHS to inspect such a licensed hospital at least once every three years if the hospital is not accredited by an accreditation body that is approved by the Centers for Medicare and Medicaid Services or does not meet the conditions of participation for certification under provisions of the federal Social Security Act relating to the Medicare program. The bill

authorizes DSHS to request a copy of such a hospital's latest accreditation survey at any time and requires the hospital to comply with such a request.

C.S.S.B. 424 authorizes DSHS to issue an emergency order to suspend a license if DSHS has reasonable cause to believe that the conduct of a license holder creates an immediate danger to public health and safety. The bill establishes that an emergency suspension is effective immediately without a hearing on notice to the license holder. The bill requires DSHS, before issuing the emergency order, to provide the license holder the opportunity to respond to DSHS's findings. The bill requires DSHS, after the issuance of the emergency order and on written request of the license holder to DSHS for a hearing, to refer the matter to the State Office of Administrative Hearings (SOAH) and requires an administrative law judge of SOAH to conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received by DSHS to determine if the emergency suspension is to be continued, modified, or rescinded. The bill establishes that the hearing and any appeal are governed by DSHS rules for a contested case hearing and the Administrative Procedure Act.

C.S.S.B. 424 includes among matters required to be considered by DSHS in determining the amount of administrative penalty to assess against a hospital for a violation of the Texas Hospital Licensing Law the effect of the penalty on the hospital's ability to continue to provide services. The bill raises the cap on the penalty from \$1,000 for each violation to \$25,000 for each violation but caps the penalty at \$10,000 for each violation if the hospital is a rural hospital with 75 beds or fewer. The bill defines "rural hospital" for purposes of assessing the penalty.

C.S.S.B. 424 authorizes DSHS to request the attorney general to bring an action in the name and on behalf of the state for the appointment of a trustee to operate a hospital if the hospital is operating without a license, if DSHS has suspended or revoked the hospital's license, if license suspension or revocation procedures against the hospital are pending and DSHS determines that an immediate danger to public health and safety exists, if DSHS determines that an emergency exists that presents an immediate danger to public health and safety, or if the hospital is closing and arrangements for relocation of the patients to other licensed institutions have not been made before closure. The bill limits the authority of a trustee appointed to provide for patient relocation to ensuring an orderly and safe relocation of the hospital's patients as quickly as possible. The bill requires a court, after a hearing, to appoint a trustee to take charge of a hospital if the court finds that involuntary appointment of a trustee is necessary. The bill requires the court to appoint as trustee an individual whose background includes institutional medical administration. The bill specifies that the venue for an action brought to appoint a trustee is in Travis County. The bill prohibits a court having jurisdiction of a judicial review of the matter from ordering arbitration, whether on the motion of any party or on the court's own motion, to resolve the legal issues of a dispute involving the appointment of a trustee or conduct with respect to which the appointment of a trustee is sought.

C.S.S.B. 424 authorizes a court to appoint a person to serve as a trustee only if the proposed trustee can demonstrate to the court that the proposed trustee will be present at the hospital as required to perform the duties of a trustee and available on call to appropriate staff at the hospital, DSHS, and the court as necessary during the time the trustee is not present at the hospital. The bill requires such a trustee to report to the court in the event that the trustee is unable to satisfy these requirements and authorizes the court, on the motion of any party or on the court's own motion, to replace a trustee who is unable to satisfy these requirements. The bill requires a trustee's charges to separately identify personal hours worked for which compensation is claimed and authorizes a trustee's claim for personal compensation to include only compensation for activities related to the trusteeship and performed in or on behalf of the hospital.

C.S.S.B. 424 entitles an appointed trustee to reasonable compensation as determined by the court. The bill requires the court, on the motion of any party, to review the reasonableness of the trustee's compensation. The bill requires the court to reduce the amount if the court determines

that the compensation is not reasonable. The bill authorizes the trustee to petition the court to order the release to the trustee of any payment owed the trustee for care and services provided to the patients if the payment has been withheld, including a payment withheld by HHSC at the recommendation of DSHS, and specifies that withheld payments may include payments withheld by a governmental agency or other entity during the appointment of the trustee, such as payments for Medicaid, Medicare, or insurance, payments by another third party, or payments for medical expenses borne by the patient.

C.S.S.B. 424 requires an appointed trustee to provide periodic reports to DSHS and the governing body of the hospital regarding the status of the hospital following the emergency order to suspend the hospital's license and during the period the hospital is operated by the trustee and each activity performed by the trustee on behalf of the hospital. The bill expressly does not require a trustee to report to the governing body of the hospital any information that may limit or impair the authority or activities of the trustee. The bill's provisions relating to the appointing of a trustee for a hospital do not apply to a hospital owned, operated, or leased by a governmental entity.

C.S.S.B. 424 establishes the hospital perpetual care account as a dedicated account in the general revenue fund consisting of fees deposited to the credit of the account and money transferred or appropriated to the account by the legislature. The bill requires the executive commissioner to administer the account and limits the use of money in the account to paying for DSHS costs associated with the storage of medical records by DSHS and any court-ordered appointment of a trustee to operate a hospital as provided by the bill's provisions. The bill authorizes the executive commissioner to impose and DSHS to collect a fee from each hospital in an amount necessary to maintain a balance of \$5 million in the hospital perpetual care account at all times. The bill requires the fee to be deposited to the credit of the hospital perpetual care account and requires DSHS to suspend collection of the fee for the duration of a period during which the balance of the hospital perpetual care account is \$5 million or more. The bill requires the commissioner of insurance, on January 1, 2016, to transfer \$5 million from the healthy Texas small employer premium stabilization fund to the hospital perpetual care account.

#### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

#### **COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE**

C.S.S.B. 424 differs from the engrossed in minor or nonsubstantive ways to conform to changes made by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, which became effective April 2, 2015.