

sbaBILL ANALYSIS

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C.S.S.B. 424
By: Schwertner; Nelson
Health & Human Services
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Last year, 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 the hospitals. Such a closure has the potential to limit access to life-saving care for the citizens of rural Texas.

The Committee Substitute to S.B. 424 makes the following changes:

- Removes the surety bond language and replaces it with a hospital perpetual care fund. The fund will be used to cover the cost of storage of medical records in the case of a hospital closure and/or payment of a trustee if necessary. The fund will be capped at \$5 million. Initial funding for the fund will be taken from the Premium Stabilization Fund at the Texas Department of Insurance. C.S.S.B 424 gives the Department of State Health Services (DSHS) authority to raise fees, as necessary, to keep the hospital perpetual care fund at \$5 million as it is depleted.
- Includes language to ensure patient and provider confidentiality when sharing information with the office of the inspector general.
- Replaces requirement that ALL hospitals be inspected by DSHS with a requirement that only hospitals that are not accredited and/or deemed by the Centers for Medicare and Medicaid Services be inspected every three years. Ten percent of the remaining hospitals (those with accreditation/deemed status) would be inspected each year on a rotating basis based on risk. C.S.S.B. 424 also requires hospitals to share accreditation surveys with DSHS upon request.
- Adds language that would require DSHS to consider input and additional information from a license holder in response to the DSHS's findings prior to the issuance of an emergency suspension.
- Creates a separate maximum penalty for rural hospitals with 75 beds or less at \$10,000 maximum per penalty per day.
- Requires a trustee to have a background that includes institutional medical administration.
- Exempts public hospitals from the trustee provision and adds language that requires a trustee to provide periodic reports to DSHS and the hospital's governing body following the issuance of an emergency suspension, including updates on the activities of the trustee.
- Replaces reference to imminent danger with "immediate danger to public health and safety" and uses this consistently throughout the bill.

C.S.S.B. 424 amends current law relating to the licensing and regulation of hospitals in this state, increases the amount of administrative penalties assessed or imposed against certain hospitals, and authorizes the imposition of a fee.

[**Note:** While the statutory reference in this bill is to the Texas Department of Health (TDH), the following amendments affect the Department of State Health Services, as the successor agency to TDH.]

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 (Section 241.0261, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 241.022(b), Health and Safety Code, as follows:

(b) Requires that the hospital license application contain the name and social security number of any individual who has an ownership interest of more than five, rather than 25, percent in the corporation, if the applicant is a corporation.

SECTION 2. Amends Subchapter B, Chapter 241, Health and Safety Code, by adding Section 241.0261, as follows:

Sec. 241.0261. INFORMATION SHARING WITH OFFICE OF INSPECTOR GENERAL. (a) Authorizes the Texas Department of Health (TDH) in accordance with TDH 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 this chapter or a hospital license holder.

(b) Requires that any information shared by TDH under this section with the office of inspector general of the HHSC that is confidential under Section 241.051 (Inspections) remain confidential and is not subject to disclosure under Chapter 552 (Public Information), Government Code.

(c) Requires the executive commissioner of HHSC (executive commissioner) to adopt the rules necessary to implement this section.

SECTION 3. Amends Section 241.051, Health and Safety Code, by amending Subsection (a) and adding Subsections (a-1), (a-2), and (a-3), as follows:

(a) Requires TDH to conduct an inspection of each hospital licensed under this chapter as provided by Subsections (a-1) and (a-2), and authorizes TDH to make any inspection, survey, or investigation it considers necessary, rather than authorizes TDH to make any inspection, survey, or investigation that it considers necessary.

(a-1) Requires TDH to adopt a schedule for the inspection of each hospital licensed under this chapter so that 10 percent of the hospitals, or as near as possible to 10 percent, are scheduled to be inspected each year. Requires TDH, in scheduling a hospital for inspection under this subsection, to consider an accreditation, validation, or other full survey and prioritize the inspection of hospitals in accordance with risk factors TDH considers important, including:

- (1) the date on which a hospital was last inspected;
- (2) the number of deficiencies noted during the previous inspection of a hospital; and
- (3) the number of complaints received regarding a hospital.

(a-2) Requires TDH, notwithstanding Subsection (a-1), to inspect a hospital licensed under this chapter at least once every three years if the hospital:

- (1) is not accredited by an accreditation body that is approved by the Centers for Medicare and Medicaid Services; or
- (2) does not meet the conditions of participation for certification under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.).

(a-3) Authorizes TDH to request a copy of a hospital's latest accreditation survey at any time. Requires the hospital to comply with TDH's request.

SECTION 4. Amends Subchapter C, Chapter 241, Health and Safety Code, by adding Section 241.0532, as follows:

Sec. 241.0532. EMERGENCY SUSPENSION. (a) Authorizes TDH to issue an emergency order to suspend a license issued under this chapter if TDH has reasonable cause to believe that the conduct of a license holder creates an immediate danger to public health and safety. Provides that an emergency suspension is effective immediately without a hearing on notice to the license holder.

(b) Requires TDH, before issuing an emergency order to suspend a license under Subsection (a), to provide the license holder the opportunity to respond to TDH's findings.

(c) Requires TDH, after the issuance of an emergency order under this section, on written request of the license holder to TDH for a hearing, to refer the matter to the State Office of Administrative Hearings (SOAH). 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 TDH to determine if the emergency suspension is to be continued, modified, or rescinded.

(d) Provides that the hearing and any appeal are governed by TDH's rules for a contested case hearing and Chapter 2001 (Administrative Procedure), Government Code.

SECTION 5. Amends Sections 241.059, Health and Safety Code, by amending Subsections (b) and (c) and adding Subsections (c-1), (c-2), and (c-3), as follows:

(b) Requires the commissioner of health, in determining the amount of the penalty, to consider the effect of the penalty on the hospital's ability to continue to provide services. Makes nonsubstantive changes.

(c) Prohibits a penalty assessed under this section from exceeding:

(1) \$10,000 for each violation, if the hospital is a rural hospital with 75 beds or fewer; or

(2) \$25,000 for each violation for all other hospitals.

(c-1) Requires that the penalty for a violation of Section 166.004 (Statement Relating to Advance Directive), notwithstanding Subsection (c) be \$500.

(c-2) Creates this subsection from existing text. Makes no other changes to this subsection.

(c-3) Defines "rural hospital" in this section.

Deletes existing text prohibiting the penalty from exceeding \$1,000 for each violation, except that the penalty for violation for Section 166.004 is required to be \$500.

SECTION 6. Amends Chapter 241, Health and Safety Code, by adding Subchapter D and D-1, as follows:

SUBCHAPTER D. TRUSTEES FOR HOSPITALS

Sec. 241.081. INVOLUNTARY APPOINTMENT. (a) Authorizes TDH 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:

- (1) the hospital is operating without a license;
- (2) TDH has suspended or revoked the hospital's license;
- (3) license suspension or revocation procedures against the hospital are pending and TDH determines that an imminent threat to the health and safety of the patients exists;
- (4) TDH determines that an emergency exists that presents an immediate danger to public health and safety; or
- (5) the hospital is closing and arrangements for relocation of the patients to other licensed institutions have not been made before closure.

(b) Provides that a trustee appointed under Subsection (a)(5) may only ensure an orderly and safe relocation of the hospital's patients as quickly as possible.

(c) 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.

(d) Requires the court to appoint as trustee an individual whose background includes institutional medical administration.

(e) Provides that venue for an action brought under this section is in Travis County.

(f) 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:

- (1) appointment of a trustee under this section; or
- (2) conduct with respect to which the appointment of a trustee is sought.

Sec. 241.082. QUALIFICATIONS OF TRUSTEES. (a) Authorizes a court to appoint a person to serve as a trustee under this subchapter only if the proposed trustee can demonstrate to the court that the proposed trustee will be:

- (1) present at the hospital as required to perform the duties of a trustee; and
- (2) available on call to appropriate staff at the hospital, TDH, and the court as necessary during the time the trustee is not present at the hospital.

(b) Requires a trustee to report to the court in the event that the trustee is unable to satisfy the requirements of Subsection (a)(1) or (2).

(c) 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 the requirements of Subsection (a)(1) or (2).

(d) Requires a trustee's charges to separately identify personal hours worked for which compensation is claimed. Requires 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.

Sec. 241.083. COMPENSATION; RELEASE OF FUNDS. (a) Entitles a trustee appointed under this subchapter to reasonable compensation as determined by the court. Requires the court, on the motion of any party, to review the reasonableness of the

trustee's compensation. Requires the court to reduce the amount if the court determines that the compensation is not reasonable.

(b) 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 TDH.

(c) Authorizes withheld payments to include payments withheld by a governmental agency or other entity during the appointment of the trustee, such as payments:

- (1) for Medicaid, Medicare, or insurance;
- (2) by another third party; or
- (3) for medical expenses borne by the patient.

Sec. 241.084. COMMUNICATIONS BY TRUSTEE. (a) Requires a trustee appointed under this subchapter, except as provided by Subsection (b), to provide periodic reports to TDH and the governing body of the hospital regarding:

- (1) 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
- (2) each activity performed by the trustee on behalf of the hospital.

(b) Provides that a trustee is not required to report to the governing body of the hospital any information that may limit or impair the authority or activities of the trustee.

Sec. 241.085. EXEMPTION. Provides that this subchapter does not apply to a hospital owned, operated, or leased by a governmental entity.

SUBCHAPTER D-1. HOSPITAL PERPETUAL CARE ACCOUNT; FEE

Sec. 241.091. HOSPITAL PERPETUAL CARE ACCOUNT. (a) Provides that the hospital perpetual care account is a dedicated account in the general revenue fund.

(b) Provides that the account consists of:

- (1) fees deposited to the credit of the account under this subchapter; and
- (2) money transferred or appropriated to the account by the legislature.

(c) Requires the executive commissioner to administer the account. Authorizes money in the account be used only to pay for TDH costs associated with:

- (1) the storage of medical records by TDH; and
- (2) any court-ordered appointment of a trustee to operate a hospital as provided under Section 241.081, including the payment of reasonable compensation to the trustee under Section 241.083.

Sec. 241.092. HOSPITAL PERPETUAL CARE FEE. (a) Authorizes the executive commissioner to impose and authorizes TDH 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.

(b) Requires that the fee imposed under this section be deposited to the credit of the hospital perpetual care account.

(c) Requires TDH 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.

SECTION 7. (a) Requires the executive commissioner to adopt the rules required by Chapter 241 (Hospitals), Health and Safety Code, as amended by this Act, not later than May 1, 2016.

(b) Makes application of Sections 241.022 and 241.059, Health and Safety Code, as amended by this Act, prospective.

(c) Requires the commissioner of insurance, notwithstanding Section 6(e)(2)(B), Chapter 615 (S.B. 1367), Acts of the 83rd Legislature, Regular Session, 2013, on January 1, 2016, to transfer \$5 million from the fund established under Subchapter F, Chapter 1508, Insurance Code, to the hospital perpetual care account established under Section 241.091, Health and Safety Code, as added by this Act.

SECTION 8. Effective date: upon passage or September 1, 2015.