

By: Schwertner, et al.

S.B. No. 424

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the licensing and regulation of hospitals in this
3 state; increasing the amount of administrative penalties assessed
4 or imposed against certain hospitals; authorizing the imposition of
5 a fee.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Section 241.022(b), Health and Safety Code, is
8 amended to read as follows:

9 (b) The application must contain:

10 (1) the name and social security number of the sole
11 proprietor, if the applicant is a sole proprietor;

12 (2) the name and social security number of each
13 general partner who is an individual, if the applicant is a
14 partnership;

15 (3) the name and social security number of any
16 individual who has an ownership interest of more than five [25]
17 percent in the corporation, if the applicant is a corporation; and

18 (4) any other information that the department may
19 reasonably require.

20 SECTION 2. Subchapter B, Chapter 241, Health and Safety
21 Code, is amended by adding Section 241.0261 to read as follows:

22 Sec. 241.0261. INFORMATION SHARING WITH OFFICE OF INSPECTOR
23 GENERAL. (a) The department in accordance with department rules
24 may share with the office of inspector general of the Health and

1 Human Services Commission information relating to an applicant for
2 a hospital license under this chapter or a hospital license holder.

3 (b) Any information shared by the department under this
4 section with the office of inspector general of the Health and Human
5 Services Commission that is confidential under Section 241.051 must
6 remain confidential and is not subject to disclosure under Chapter
7 552, Government Code.

8 (c) The executive commissioner of the Health and Human
9 Services Commission shall adopt the rules necessary to implement
10 this section.

11 SECTION 3. Section 241.051, Health and Safety Code, is
12 amended by amending Subsection (a) and adding Subsections (a-1),
13 (a-2), and (a-3) to read as follows:

14 (a) The department shall conduct an ~~[may make any]~~
15 inspection of each hospital licensed under this chapter as provided
16 by Subsections (a-1) and (a-2), and the department may make any
17 inspection, survey, or investigation ~~[that]~~ it considers
18 necessary. A representative of the department may enter the
19 premises of a hospital at any reasonable time to make an inspection,
20 a survey, or an investigation to assure compliance with or prevent a
21 violation of this chapter, the rules adopted under this chapter, an
22 order or special order of the commissioner of health, a special
23 license provision, a court order granting injunctive relief, or
24 other enforcement procedures. The department shall maintain the
25 confidentiality of hospital records as applicable under state or
26 federal law.

27 (a-1) The department shall adopt a schedule for the

1 inspection of each hospital licensed under this chapter so that 10
2 percent of the hospitals, or as near as possible to 10 percent, are
3 scheduled to be inspected each year. In scheduling a hospital for
4 inspection under this subsection, the department must consider an
5 accreditation, validation, or other full survey and must prioritize
6 the inspection of hospitals in accordance with risk factors the
7 department considers important, including:

8 (1) the date on which a hospital was last inspected;

9 (2) the number of deficiencies noted during the
10 previous inspection of a hospital; and

11 (3) the number of complaints received regarding a
12 hospital.

13 (a-2) Notwithstanding Subsection (a-1), the department
14 shall inspect a hospital licensed under this chapter at least once
15 every three years if the hospital:

16 (1) is not accredited by an accreditation body that is
17 approved by the Centers for Medicare and Medicaid Services; or

18 (2) does not meet the conditions of participation for
19 certification under Title XVIII of the Social Security Act (42
20 U.S.C. Section 1395 et seq.).

21 (a-3) The department may request a copy of a hospital's
22 latest accreditation survey at any time. The hospital shall comply
23 with the department's request.

24 SECTION 4. Subchapter C, Chapter 241, Health and Safety
25 Code, is amended by adding Section 241.0532 to read as follows:

26 Sec. 241.0532. EMERGENCY SUSPENSION. (a) The department
27 may issue an emergency order to suspend a license issued under this

1 chapter if the department has reasonable cause to believe that the
2 conduct of a license holder creates an immediate danger to public
3 health and safety. An emergency suspension is effective
4 immediately without a hearing on notice to the license holder.

5 (b) Before issuing an emergency order to suspend a license
6 under Subsection (a), the department must provide the license
7 holder the opportunity to respond to the department's findings.

8 (c) After the issuance of an emergency order under this
9 section, on written request of the license holder to the department
10 for a hearing, the department shall refer the matter to the State
11 Office of Administrative Hearings. An administrative law judge of
12 the office shall conduct a hearing not earlier than the 10th day or
13 later than the 30th day after the date the hearing request is
14 received by the department to determine if the emergency suspension
15 is to be continued, modified, or rescinded.

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

19 SECTION 5. Section 241.059, Health and Safety Code, is
20 amended by amending Subsections (b) and (c) and adding Subsections
21 (c-1), (c-2), and (c-3) to read as follows:

22 (b) In determining the amount of the penalty, the
23 commissioner of health shall consider:

- 24 (1) the hospital's previous violations;
25 (2) the seriousness of the violation;
26 (3) any threat to the health, safety, or rights of the
27 hospital's patients;

1 (4) the demonstrated good faith of the hospital; ~~and~~

2 (5) the effect of the penalty on the hospital's ability
3 to continue to provide services; and

4 (6) such other matters as justice may require.

5 (c) A ~~The~~ penalty assessed under this section may not
6 exceed:

7 (1) \$10,000 ~~[\$1,000]~~ for each violation, if the
8 hospital is a rural hospital with 75 beds or fewer; or

9 (2) \$25,000 for each violation for all other
10 hospitals.

11 (c-1) Notwithstanding Subsection (c), ~~except that~~ the
12 penalty for a violation of Section 166.004 shall be \$500.

13 (c-2) Each day of a continuing violation, other than a
14 violation of Section 166.004, may be considered a separate
15 violation.

16 (c-3) In this section, "rural hospital" means a hospital
17 that:

18 (1) is designated as a critical access hospital under
19 and in compliance with 42 U.S.C. Section 1395i-4;

20 (2) is classified as a rural referral center under 42
21 U.S.C. Section 1395ww(d)(5)(C)(i);

22 (3) is a sole community hospital, as defined by 42
23 U.S.C. Section 1395ww(d)(5)(D)(iii); or

24 (4) is located in a county with a population of 60,000
25 or less.

26 SECTION 6. Chapter 241, Health and Safety Code, is amended
27 by adding Subchapters D and D-1 to read as follows:

1 SUBCHAPTER D. TRUSTEES FOR HOSPITALS

2 Sec. 241.081. INVOLUNTARY APPOINTMENT. (a) The

3 department may request the attorney general to bring an action in
4 the name and on behalf of the state for the appointment of a trustee
5 to operate a hospital if:

6 (1) the hospital is operating without a license;

7 (2) the department has suspended or revoked the
8 hospital's license;

9 (3) license suspension or revocation procedures
10 against the hospital are pending and the department determines that
11 an immediate danger to public health and safety exists;

12 (4) the department determines that an emergency exists
13 that presents an immediate danger to public health and safety; or

14 (5) the hospital is closing and arrangements for
15 relocation of the patients to other licensed institutions have not
16 been made before closure.

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

20 (c) After a hearing, a court shall appoint a trustee to take
21 charge of a hospital if the court finds that involuntary
22 appointment of a trustee is necessary.

23 (d) The court shall appoint as trustee an individual whose
24 background includes institutional medical administration.

25 (e) Venue for an action brought under this section is in
26 Travis County.

27 (f) A court having jurisdiction of a judicial review of the

1 matter may not order arbitration, whether on the motion of any party
2 or on the court's own motion, to resolve the legal issues of a
3 dispute involving the:

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

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

11 (1) present at the hospital as required to perform the
12 duties of a trustee; and

13 (2) available on call to appropriate staff at the
14 hospital, the department, and the court as necessary during the
15 time the trustee is not present at the hospital.

16 (b) A trustee shall report to the court in the event that the
17 trustee is unable to satisfy the requirements of Subsection (a)(1)
18 or (2).

19 (c) On the motion of any party or on the court's own motion,
20 the court may replace a trustee who is unable to satisfy the
21 requirements of Subsection (a)(1) or (2).

22 (d) A trustee's charges must separately identify personal
23 hours worked for which compensation is claimed. A trustee's claim
24 for personal compensation may include only compensation for
25 activities related to the trusteeship and performed in or on behalf
26 of the hospital.

27 Sec. 241.083. COMPENSATION; RELEASE OF FUNDS. (a) A

1 trustee appointed under this subchapter is entitled to reasonable
2 compensation as determined by the court. On the motion of any
3 party, the court shall review the reasonableness of the trustee's
4 compensation. The court shall reduce the amount if the court
5 determines that the compensation is not reasonable.

6 (b) The trustee may petition the court to order the release
7 to the trustee of any payment owed the trustee for care and services
8 provided to the patients if the payment has been withheld,
9 including a payment withheld by the Health and Human Services
10 Commission at the recommendation of the department.

11 (c) Withheld payments may include payments withheld by a
12 governmental agency or other entity during the appointment of the
13 trustee, such as payments:

14 (1) for Medicaid, Medicare, or insurance;

15 (2) by another third party; or

16 (3) for medical expenses borne by the patient.

17 Sec. 241.084. COMMUNICATIONS BY TRUSTEE. (a) Except as
18 provided by Subsection (b), a trustee appointed under this
19 subchapter shall provide periodic reports to the department and the
20 governing body of the hospital regarding:

21 (1) the status of the hospital following the emergency
22 order to suspend the hospital's license and during the period the
23 hospital is operated by the trustee; and

24 (2) each activity performed by the trustee on behalf
25 of the hospital.

26 (b) A trustee is not required to report to the governing
27 body of the hospital any information that may limit or impair the

1 authority or activities of the trustee.

2 Sec. 241.085. EXEMPTION. This subchapter does not apply to
3 a hospital owned, operated, or leased by a governmental entity.

4 SUBCHAPTER D-1. HOSPITAL PERPETUAL CARE ACCOUNT; FEE

5 Sec. 241.091. HOSPITAL PERPETUAL CARE ACCOUNT. (a) The
6 hospital perpetual care account is a dedicated account in the
7 general revenue fund.

8 (b) The account consists of:

9 (1) fees deposited to the credit of the account under
10 this subchapter; and

11 (2) money transferred or appropriated to the account
12 by the legislature.

13 (c) The executive commissioner of the Health and Human
14 Services Commission shall administer the account. Money in the
15 account may be used only to pay for department costs associated
16 with:

17 (1) the storage of medical records by the department;
18 and

19 (2) any court-ordered appointment of a trustee to
20 operate a hospital as provided under Section 241.081, including the
21 payment of reasonable compensation to the trustee under Section
22 241.083.

23 Sec. 241.092. HOSPITAL PERPETUAL CARE FEE. (a) The
24 executive commissioner of the Health and Human Services Commission
25 may impose and the department may collect a fee from each hospital
26 in an amount necessary to maintain a balance of \$5 million in the
27 hospital perpetual care account at all times.

1 (b) The fee imposed under this section shall be deposited to
2 the credit of the hospital perpetual care account.

3 (c) The department shall suspend collection of the fee for
4 the duration of a period during which the balance of the hospital
5 perpetual care account is \$5 million or more.

6 SECTION 7. (a) The executive commissioner of the Health and
7 Human Services Commission shall adopt the rules required by Chapter
8 241, Health and Safety Code, as amended by this Act, not later than
9 May 1, 2016.

10 (b) The changes in law made by this Act apply only to an
11 application submitted under Section 241.022, Health and Safety
12 Code, as amended by this Act, or the assessment or imposition of an
13 administrative penalty under Section 241.059, Health and Safety
14 Code, as amended by this Act, for a violation that occurs on or
15 after the effective date of this Act. An application submitted
16 under Section 241.022 before the effective date of this Act or the
17 assessment or imposition of an administrative penalty under Section
18 241.059 for a violation that occurs before the effective date of
19 this Act is governed by the law in effect on the date the
20 application was submitted or the violation occurred, and that law
21 is continued in effect for that purpose.

22 (c) Notwithstanding Section 6(e)(2)(B), Chapter 615 (S.B.
23 1367), Acts of the 83rd Legislature, Regular Session, 2013, on
24 January 1, 2016, the commissioner of insurance shall transfer \$5
25 million from the fund established under Subchapter F, Chapter 1508,
26 Insurance Code, to the hospital perpetual care account established
27 under Section 241.091, Health and Safety Code, as added by this Act.

1 SECTION 8. This Act takes effect immediately if it receives
2 a vote of two-thirds of all the members elected to each house, as
3 provided by Section 39, Article III, Texas Constitution. If this
4 Act does not receive the vote necessary for immediate effect, this
5 Act takes effect September 1, 2015.