

By: Schwertner

S.B. No. 424

A BILL TO BE ENTITLED

1 AN ACT  
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.

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

6 SECTION 1. Sections 241.022(b) and (d), Health and Safety  
7 Code, are amended to read as follows:

8 (b) The application must contain:

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

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

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

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

19 (d) The application must be accompanied by:

20 (1) a copy of the hospital's current patient transfer  
21 policy;

22 (2) a nonrefundable license fee;

23 (3) copies of the hospital's patient transfer  
24 agreements, unless the filing of copies has been waived by the

1 hospital licensing director in accordance with the rules adopted  
2 under this chapter; ~~and~~

3 (4) a copy of the most recent annual fire safety  
4 inspection report from the fire marshal in whose jurisdiction the  
5 hospital is located; and

6 (5) a copy of the surety bond required under Section  
7 241.0221.

8 SECTION 2. Subchapter B, Chapter 241, Health and Safety  
9 Code, is amended by adding Section 241.0221 to read as follows:

10 Sec. 241.0221. SURETY BOND FOR LICENSE. (a) An applicant  
11 for issuance of, or a license holder applying for renewal of, a  
12 license issued under this chapter must provide the department with  
13 a surety bond in an amount sufficient to cover the costs associated  
14 with:

15 (1) the storage of medical records for 10 years if the  
16 hospital is closed; and

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

21 (b) This section does not apply to a hospital that is owned  
22 or directly operated by a governmental entity.

23 SECTION 3. Subchapter B, Chapter 241, Health and Safety  
24 Code, is amended by adding Section 241.0261 to read as follows:

25 Sec. 241.0261. INFORMATION SHARING WITH OFFICE OF INSPECTOR  
26 GENERAL. (a) The department in accordance with department rules  
27 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) The executive commissioner of the Health and Human  
4 Services Commission shall adopt the rules necessary to implement  
5 this section.

6 SECTION 4. Section 241.051(a), Health and Safety Code, is  
7 amended to read as follows:

8 (a) The department shall conduct an [~~may make any~~]  
9 inspection of each hospital licensed under this chapter at least  
10 once every three years, and the department may make any inspection,  
11 survey, or investigation [~~that~~] it considers necessary. A  
12 representative of the department may enter the premises of a  
13 hospital at any reasonable time to make an inspection, a survey, or  
14 an investigation to assure compliance with or prevent a violation  
15 of this chapter, the rules adopted under this chapter, an order or  
16 special order of the commissioner of health, a special license  
17 provision, a court order granting injunctive relief, or other  
18 enforcement procedures. The department shall maintain the  
19 confidentiality of hospital records as applicable under state or  
20 federal law.

21 SECTION 5. Subchapter C, Chapter 241, Health and Safety  
22 Code, is amended by adding Section 241.0532 to read as follows:

23 Sec. 241.0532. EMERGENCY SUSPENSION. (a) The department  
24 may issue an emergency order to suspend a license issued under this  
25 chapter if the department has reasonable cause to believe that the  
26 conduct of a license holder creates an immediate danger to the  
27 public health and safety. An emergency suspension is effective

1 immediately without a hearing on notice to the license holder.

2 (b) On written request of the license holder to the  
3 department for a hearing, the department shall refer the matter to  
4 the State Office of Administrative Hearings. An administrative law  
5 judge of the office shall conduct a hearing not earlier than the  
6 10th day or later than the 30th day after the date the hearing  
7 request is received by the department to determine if the emergency  
8 suspension is to be continued, modified, or rescinded.

9 (c) The hearing and any appeal are governed by the  
10 department's rules for a contested case hearing and Chapter 2001,  
11 Government Code.

12 SECTION 6. Sections 241.059(b) and (c), Health and Safety  
13 Code, are amended to read as follows:

14 (b) In determining the amount of the penalty, the  
15 commissioner of health shall consider:

- 16 (1) the hospital's previous violations;  
17 (2) the seriousness of the violation;  
18 (3) any threat to the health, safety, or rights of the  
19 hospital's patients;  
20 (4) the demonstrated good faith of the hospital; ~~and~~  
21 (5) the effect of the penalty on the hospital's ability  
22 to continue to provide services; and  
23 (6) such other matters as justice may require.

24 (c) The penalty may not exceed \$25,000 [~~\$1,000~~] for each  
25 violation, except that the penalty for a violation of Section  
26 166.004 shall be \$500. Each day of a continuing violation, other  
27 than a violation of Section 166.004, may be considered a separate

1 violation.

2 SECTION 7. Chapter 241, Health and Safety Code, is amended  
3 by adding Subchapter D to read as follows:

4 SUBCHAPTER D. TRUSTEES FOR HOSPITALS

5 Sec. 241.081. INVOLUNTARY APPOINTMENT. (a) The department  
6 may request the attorney general to bring an action in the name and  
7 on behalf of the state for the appointment of a trustee to operate a  
8 hospital if:

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

10 (2) the department has suspended or revoked the  
11 hospital's license;

12 (3) license suspension or revocation procedures  
13 against the hospital are pending and the department determines that  
14 an imminent threat to the health and safety of the patients exists;

15 (4) the department determines that an emergency exists  
16 that presents an immediate threat to the health and safety of the  
17 patients; or

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

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

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

27 (d) If possible, the court shall appoint as trustee an

1 individual whose background includes institutional medical  
2 administration.

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

5 (f) A court having jurisdiction of a judicial review of the  
6 matter may not order arbitration, whether on the motion of any party  
7 or on the court's own motion, to resolve the legal issues of a  
8 dispute involving the:

9 (1) appointment of a trustee under this section; or

10 (2) conduct with respect to which the appointment of a  
11 trustee is sought.

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

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

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

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

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

27 (d) A trustee's charges must separately identify personal

1 hours worked for which compensation is claimed. A trustee's claim  
2 for personal compensation may include only compensation for  
3 activities related to the trusteeship and performed in or on behalf  
4 of the hospital.

5 Sec. 241.083. COMPENSATION; RELEASE OF FUNDS. (a) A  
6 trustee appointed under this subchapter is entitled to reasonable  
7 compensation as determined by the court. On the motion of any  
8 party, the court shall review the reasonableness of the trustee's  
9 compensation. The court shall reduce the amount if the court  
10 determines that the compensation is not reasonable.

11 (b) The trustee may petition the court to order the release  
12 to the trustee of any payment owed the trustee for care and services  
13 provided to the patients if the payment has been withheld,  
14 including a payment withheld by the Health and Human Services  
15 Commission at the recommendation of the department.

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

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

20 (2) by another third party; or

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

22 SECTION 8. (a) The executive commissioner of the Health and  
23 Human Services Commission shall adopt the rules required by Chapter  
24 241, Health and Safety Code, as amended by this Act, not later than  
25 May 1, 2016.

26 (b) The changes in law made by this Act apply only to an  
27 application submitted under Section 241.022, Health and Safety

1 Code, as amended by this Act, or the assessment or imposition of an  
2 administrative penalty under Section 241.059, Health and Safety  
3 Code, as amended by this Act, for a violation that occurs on or  
4 after the effective date of this Act. An application submitted  
5 under Section 241.022 before the effective date of this Act or the  
6 assessment or imposition of an administrative penalty under Section  
7 241.059 for a violation that occurs before the effective date of  
8 this Act is governed by the law in effect on the date the  
9 application was submitted or the violation occurred, and that law  
10 is continued in effect for that purpose.

11 SECTION 9. This Act takes effect immediately if it receives  
12 a vote of two-thirds of all the members elected to each house, as  
13 provided by Section 39, Article III, Texas Constitution. If this  
14 Act does not receive the vote necessary for immediate effect, this  
15 Act takes effect September 1, 2015.