

Amend CSHB 4180 (senate committee report) by adding the following SECTIONS and renumbering SECTIONS accordingly:

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

(b) The application must contain:

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

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

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

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

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

Sec. 241.0221. CRIMINAL HISTORY BACKGROUND CHECK FOR LICENSE APPLICANTS. (a) This section does not apply to a governmental unit required to obtain a license under this chapter.

(b) The department shall conduct a criminal history background check on each applicant for a license under this chapter and, if the applicant is a partnership or corporation, each individual named in the application under Section 241.022(b).

(c) The executive commissioner by rule shall:

(1) determine the manner by which an applicant or individual is required to submit information for purposes of a criminal history background check under this section; and

(2) establish criteria for determining whether an applicant is eligible for a license under this chapter based on the criminal history background check conducted under this section.

(d) The department may enter into an agreement with the Department of Public Safety to conduct the criminal history background check required under this section.

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

Sec. 241.0261. INFORMATION SHARING WITH OFFICE OF INSPECTOR

GENERAL. (a) The department in accordance with department rules may share with the office of inspector general of the commission information relating to an applicant for a hospital license under this chapter or a hospital license holder.

(b) Any information shared by the department under this section with the office of inspector general of the commission that is confidential under Section 241.051 must remain confidential and is not subject to disclosure under Chapter 552, Government Code.

(c) The executive commissioner shall adopt the rules necessary to implement this section.

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

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

(a-1) The department shall 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. In scheduling a hospital for inspection under this subsection, the department must consider an accreditation, validation, or other full survey and must prioritize the inspection of hospitals in accordance with risk factors the department 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) Notwithstanding Subsection (a-1), the department shall 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) The department may request a copy of a hospital's latest accreditation survey at any time. The hospital shall comply with the department's request.

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

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

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

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

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

SECTION _____. Section 241.059, Health and Safety Code, is amended by amending Subsections (b) and (c) and adding Subsections

(c-1), (c-2), and (c-3) to read as follows:

(b) In determining the amount of the penalty, the department shall consider:

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

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

- (1) \$10,000 ~~[\$1,000]~~ 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) Notwithstanding Subsection (c), ~~[except that]~~ the penalty for a violation of Section 166.004 shall be \$500.

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

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

- (1) is designated as a critical access hospital under and in compliance with 42 U.S.C. Section 1395i-4;
- (2) is classified as a rural referral center under 42 U.S.C. Section 1395ww(d)(5)(C)(i);
- (3) is a sole community hospital, as defined by 42 U.S.C. Section 1395ww(d)(5)(D)(iii); or
- (4) is located in a county with a population of 60,000 or less.

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

SUBCHAPTER D. TRUSTEES FOR HOSPITALS

Sec. 241.081. INVOLUNTARY APPOINTMENT. (a) The department may 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) the department has suspended or revoked the hospital's license;

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

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

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

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

(f) A court having jurisdiction of a judicial review of the matter may not order 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) A court may 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, the department, and the court as necessary during the time the trustee is not present at the hospital.

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

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

(d) A trustee's charges must separately identify personal hours worked for which compensation is claimed. A trustee's claim for personal compensation may 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) A trustee appointed under this subchapter is entitled to reasonable compensation as determined by the court. On the motion of any party, the court shall review the reasonableness of the trustee's compensation. The court shall reduce the amount if the court determines that the compensation is not reasonable.

(b) The trustee may 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 the commission at the recommendation of the department.

(c) Withheld payments may 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.

(d) Payments withheld under 42 C.F.R. Section 455.23 or Section 531.102(g), Government Code, are not subject to release under this section.

Sec. 241.084. COMMUNICATIONS BY TRUSTEE. (a) Except as provided by Subsection (b), a trustee appointed under this subchapter shall provide periodic reports to the department 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) 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. 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) The hospital perpetual care account is a dedicated account in the general revenue fund.

(b) 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) The executive commissioner shall administer the account. Money in the account may be used only to pay for department costs associated with:

(1) the storage of medical records by the department; 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) The executive commissioner may impose and the department may 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) The fee imposed under this section shall be deposited to the credit of the hospital perpetual care account.

(c) The department shall 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 _____. (a) The executive commissioner of the Health and Human Services Commission shall adopt the rules required by Chapter 241, Health and Safety Code, as amended by this Act, not later than May 1, 2018.

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

(c) Notwithstanding Section 6(e)(2)(B), Chapter 615 (S.B. 1367), Acts of the 83rd Legislature, Regular Session, 2013, on January 1, 2018, the commissioner of insurance shall 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 _____. Section 241.0221, Health and Safety Code, as added by this Act, applies only to an application for an original license submitted on or after the effective date of this Act. An application submitted before that date is governed by the law in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

SECTION _____. As soon as practicable after the effective date of this Act, the executive commissioner of the Health and Human Services Commission shall adopt rules necessary to implement Section 241.0221, Health and Safety Code, as added by this Act.