

BILL ANALYSIS

Senate Research Center
85R14798 JCG-D

C.S.S.B. 267
By: Schwertner
Health & Human Services
3/8/2017
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2014, 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.

S.B. 267 equips the state with the tools needed to keep a hospital operational if similar circumstances arise. For example, the bill allows the appropriate agency to seek appointment of a trustee by the attorney general to operate a hospital in some extreme cases in which the closure of the hospital is likely. S.B. 267 also allows the appropriate agency to place an emergency suspension on a hospital license holder if the license holder's actions place the public health and safety in immediate jeopardy. Additionally, the bill requires increased hospital ownership disclosure, requires hospitals to have a surety bond to cover the costs of storing hospital records in the event of a closure, requires the appropriate agency to inspect hospitals every three years, increases the maximum amount of penalties that may be assessed on hospitals for licensure violations, and allows the appropriate agencies to share information regarding applicants for and current holders of a hospital license.

The committee substitute to S.B. 267 makes it clear that funds withheld due to certain types of fraud cannot be released to compensate a trustee.

C.S.S.B. 267 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.

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) and SECTION 7 (Chapter 241, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 241.022(b), Health and Safety Code, to require an application for a hospital license to contain the name and social security number of any individual who has an ownership interest of more than five percent, rather than more 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 Department of State Health Services (DSHS) in accordance with DSHS rules to share with the Office of Inspector General of the Health and Human Services Commission (HHSC OIG) information relating to an applicant for a hospital license or a hospital license holder.

(b) Requires any confidential information under Section 241.051 (Inspections) shared by DSHS with HHSC OIG to remain confidential and provides that it is not subject to disclosure under Chapter 552 (Public Information), Government Code.

(c) Requires the executive commissioner of HHSC (executive commissioner) to adopt 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 DSHS to conduct an inspection of each hospital licensed under this chapter (Hospitals) as provided by Subsections (a-1) and (a-2), and authorizes DSHS to make any inspection, survey, or investigation DSHS considers necessary, rather than authorizes DSHS to make any inspection, survey, or investigation that DSHS considers necessary.

(a-1) Requires DSHS 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 DSHS, in scheduling a hospital for inspection, to consider an accreditation, validation, or other full survey and to prioritize the inspection of hospitals in accordance with certain risk factors DSHS considers important.

(a-2) Requires DSHS to inspect a hospital licensed under this chapter at least once every three years if the hospital meets certain conditions, notwithstanding Subsection (a-1).

(a-3) Authorizes DSHS to request a copy of a hospital's latest accreditation survey at any time. Requires the hospital to comply with DSHS'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 DSHS to issue an emergency order to suspend a license issued under this chapter if DSHS has reasonable cause to believe that the conduct of the 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 DSHS to provide a license holder the opportunity to respond to DSHS's finding before DSHS issues an emergency order to suspend a license under Subsection (a).

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

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

SECTION 5. Amends Section 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) Adds the effect of the penalty on the hospital's ability to continue to provide services to a list of considerations DSHS is required to make in determining the amount of a penalty. Makes nonsubstantive changes.

(c) Prohibits a penalty assessed under this section from exceeding a certain amount for each violation based on the size of the hospital, rather than prohibits the penalty from exceeding \$1000 for each violation.

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

(c-2) Creates this subsection from existing text and makes no further changes to this subsection.

(c-3) Defines "rural hospital."

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

SUBCHAPTER D. TRUSTEES FOR HOSPITALS

Sec. 241.081. INVOLUNTARY APPOINTMENT. (a) 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 under certain conditions.

(b) Authorizes a trustee appointed under Subsection (a)(5) (relating to a hospital that is closing) to 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 the 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 the venue for an action brought under this section is 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 certain disputes.

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 meet certain requirements.

(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) (relating to being present at the hospital or available on call).

(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. 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.

Sec. 241.083. COMPENSATION; RELEASE OF FUNDS. (a) Provides that a trustee appointed under this subchapter is entitled to reasonable compensation as determined by the court. Requires the court, on 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 payment has been withheld, including payment withheld by HHSC at the recommendation of DSHS.

(c) Authorizes withheld payments to include certain payments withheld by a governmental agency or other entity during the appointment of the trustee.

(d) Provides that payments withheld under 42 C.F.R. Section 455.23 or Section 531.102(g) (relating to the office of inspector general of HHSC's required actions upon suspicion of a provider falsifying records), Government Code, are not subject to release under this section.

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

(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 (account) is a dedicated account in the general revenue fund.

(b) Provides that the account consists of certain fees and money.

(c) Requires the executive commissioner to administer the account. Authorizes money in the account to be used only to pay for certain DSHS costs.

Sec. 241.092. HOSPITAL PERPETUAL CARE FEE. (a) 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 account at all times.

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

(c) Requires DSHS to suspend collection of the fee for the duration of a period during which the balance of the account is \$5 million or more.

SECTION 7. (a) Requires the executive commissioner to adopt rules required by Chapter 241, Health and Safety Code, as amended by this Act, not later than May 1, 2018.

(b) Makes application of this Act prospective.

(c) Requires the commissioner of insurance to, on January 1, 2018, notwithstanding Section 6(e)(2)(B), Chapter 615 (S.B. 1367), Acts of the 83rd Legislature, Regular Session, 2013, transfer \$5 million from the fund established under Subchapter F (Healthy Texas Small Employer Premium Stabilization Fund), Chapter 1508 (Healthy Texas Program), Insurance Code, to the perpetual care account, as added by this Act.

SECTION 8. Effective date: upon passage or September 1, 2017.