

By: Schwertner, et al.

S.B. No. 267

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 241.0221 to read as follows:

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

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

5 (c) The executive commissioner by rule shall:

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

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

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

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

17 Sec. 241.0261. INFORMATION SHARING WITH OFFICE OF INSPECTOR
18 GENERAL. (a) The department in accordance with department rules
19 may share with the office of inspector general of the commission
20 information relating to an applicant for a hospital license under
21 this chapter or a hospital license holder.

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

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

1 SECTION 4. Section 241.051, Health and Safety Code, is
2 amended by amending Subsection (a) and adding Subsections (a-1),
3 (a-2), and (a-3) to read as follows:

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

17 (a-1) The department shall adopt a schedule for the
18 inspection of each hospital licensed under this chapter so that 10
19 percent of the hospitals, or as near as possible to 10 percent, are
20 scheduled to be inspected each year. In scheduling a hospital for
21 inspection under this subsection, the department must consider an
22 accreditation, validation, or other full survey and must prioritize
23 the inspection of hospitals in accordance with risk factors the
24 department considers important, including:

- 25 (1) the date on which a hospital was last inspected;
26 (2) the number of deficiencies noted during the
27 previous inspection of a hospital; and

1 (3) the number of complaints received regarding a
2 hospital.

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

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

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

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

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

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

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

25 (c) After the issuance of an emergency order under this
26 section, on written request of the license holder to the department
27 for a hearing, the department shall refer the matter to the State

1 Office of Administrative Hearings. An administrative law judge of
2 the office shall conduct a hearing not earlier than the 10th day or
3 later than the 30th day after the date the hearing request is
4 received by the department to determine if the emergency suspension
5 is to be continued, modified, or rescinded.

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

9 SECTION 6. Section 241.059, Health and Safety Code, is
10 amended by amending Subsections (b) and (c) and adding Subsections
11 (c-1), (c-2), and (c-3) to read as follows:

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

14 (1) the hospital's previous violations;

15 (2) the seriousness of the violation;

16 (3) any threat to the health, safety, or rights of the
17 hospital's patients;

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

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

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

22 (c) A [The] penalty assessed under this section may not
23 exceed:

24 (1) \$10,000 [~~\$1,000~~] for each violation, if the
25 hospital is a rural hospital with 75 beds or fewer; or

26 (2) \$25,000 for each violation for all other
27 hospitals.

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

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

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

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

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

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

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

16 SECTION 7. Chapter 241, Health and Safety Code, is amended
17 by adding Subchapters D and D-1 to read as follows:

18 SUBCHAPTER D. TRUSTEES FOR HOSPITALS

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

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

24 (2) the department has suspended or revoked the
25 hospital's license;

26 (3) license suspension or revocation procedures
27 against the hospital are pending and the department determines that

1 an immediate danger to public health and safety exists;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (d) A trustee's charges must separately identify personal
13 hours worked for which compensation is claimed. A trustee's claim
14 for personal compensation may include only compensation for
15 activities related to the trusteeship and performed in or on behalf
16 of the hospital.

17 Sec. 241.083. COMPENSATION; RELEASE OF FUNDS. (a) A
18 trustee appointed under this subchapter is entitled to reasonable
19 compensation as determined by the court. On the motion of any
20 party, the court shall review the reasonableness of the trustee's
21 compensation. The court shall reduce the amount if the court
22 determines that the compensation is not reasonable.

23 (b) The trustee may petition the court to order the release
24 to the trustee of any payment owed the trustee for care and services
25 provided to the patients if the payment has been withheld,
26 including a payment withheld by the commission at the
27 recommendation of the department.

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

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

5 (2) by another third party; or

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

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

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

14 (1) the status of the hospital following the emergency
15 order to suspend the hospital's license and during the period the
16 hospital is operated by the trustee; and

17 (2) each activity performed by the trustee on behalf
18 of the hospital.

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

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

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

25 Sec. 241.091. HOSPITAL PERPETUAL CARE ACCOUNT. (a) The
26 hospital perpetual care account is a dedicated account in the
27 general revenue fund.

1 (b) The account consists of:

2 (1) fees deposited to the credit of the account under
3 this subchapter; and

4 (2) money transferred or appropriated to the account
5 by the legislature.

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

9 (1) the storage of medical records by the department;
10 and

11 (2) any court-ordered appointment of a trustee to
12 operate a hospital as provided under Section 241.081, including the
13 payment of reasonable compensation to the trustee under Section
14 241.083.

15 Sec. 241.092. HOSPITAL PERPETUAL CARE FEE. (a) The
16 executive commissioner may impose and the department may collect a
17 fee from each hospital in an amount necessary to maintain a balance
18 of \$5 million in the hospital perpetual care account at all times.

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

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

24 SECTION 8. (a) The executive commissioner of the Health
25 and Human Services Commission shall adopt the rules required by
26 Chapter 241, Health and Safety Code, as amended by this Act, not
27 later than May 1, 2018.

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

13 (c) Notwithstanding Section 6(e)(2)(B), Chapter 615 (S.B.
14 1367), Acts of the 83rd Legislature, Regular Session, 2013, on
15 January 1, 2018, the commissioner of insurance shall transfer \$5
16 million from the fund established under Subchapter F, Chapter 1508,
17 Insurance Code, to the hospital perpetual care account established
18 under Section 241.091, Health and Safety Code, as added by this Act.

19 SECTION 9. Section 241.0221, Health and Safety Code, as
20 added by this Act, applies only to an application for an original
21 license submitted on or after the effective date of this Act. An
22 application submitted before that date is governed by the law in
23 effect on the date the application was submitted, and the former law
24 is continued in effect for that purpose.

25 SECTION 10. As soon as practicable after the effective date
26 of this Act, the executive commissioner of the Health and Human
27 Services Commission shall adopt rules necessary to implement

1 Section 241.0221, Health and Safety Code, as added by this Act.

2 SECTION 11. This Act takes effect immediately if it
3 receives a vote of two-thirds of all the members elected to each
4 house, as provided by Section 39, Article III, Texas Constitution.
5 If this Act does not receive the vote necessary for immediate
6 effect, this Act takes effect September 1, 2017.