

By: Schwertner

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 241.0261 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 commission

1 information relating to an applicant for a hospital license under  
2 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 commission that  
5 is confidential under Section 241.051 must remain confidential and  
6 is not subject to disclosure under Chapter 552, Government Code.

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

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

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

25 (a-1) The department shall adopt a schedule for the  
26 inspection of each hospital licensed under this chapter so that 10  
27 percent of the hospitals, or as near as possible to 10 percent, are

1 scheduled to be inspected each year. In scheduling a hospital for  
2 inspection under this subsection, the department must consider an  
3 accreditation, validation, or other full survey and must prioritize  
4 the inspection of hospitals in accordance with risk factors the  
5 department considers important, including:

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

7 (2) the number of deficiencies noted during the  
8 previous inspection of a hospital; and

9 (3) the number of complaints received regarding a  
10 hospital.

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

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

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

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

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

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

1 health and safety. An emergency suspension is effective  
2 immediately without a hearing on notice to the license holder.

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

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

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

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

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

- 22 (1) the hospital's previous violations;  
23 (2) the seriousness of the violation;  
24 (3) any threat to the health, safety, or rights of the  
25 hospital's patients;  
26 (4) the demonstrated good faith of the hospital; ~~and~~  
27 (5) the effect of the penalty on the hospital's ability

1 to continue to provide services; and

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

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

5 (1) \$10,000 [~~\$1,000~~] for each violation, if the  
6 hospital is a rural hospital with 75 beds or fewer; or

7 (2) \$25,000 for each violation for all other  
8 hospitals.

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

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

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

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

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

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

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

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

26 SUBCHAPTER D. TRUSTEES FOR HOSPITALS

27 Sec. 241.081. INVOLUNTARY APPOINTMENT. (a) The department

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

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

5 (2) the department has suspended or revoked the  
6 hospital's license;

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

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

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

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

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

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

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

25 (f) A court having jurisdiction of a judicial review of the  
26 matter may not order arbitration, whether on the motion of any party  
27 or on the court's own motion, to resolve the legal issues of a

1 dispute involving the:

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

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

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

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

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

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

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

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

25 Sec. 241.083. COMPENSATION; RELEASE OF FUNDS. (a) A  
26 trustee appointed under this subchapter is entitled to reasonable  
27 compensation as determined by the court. On the motion of any

1 party, the court shall review the reasonableness of the trustee's  
2 compensation. The court shall reduce the amount if the court  
3 determines that the compensation is not reasonable.

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

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

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

13 (2) by another third party; or

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

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

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

22 (2) each activity performed by the trustee on behalf  
23 of the hospital.

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

27 Sec. 241.085. EXEMPTION. This subchapter does not apply to



1 a hospital owned, operated, or leased by a governmental entity.

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

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

6 (b) The account consists of:

7 (1) fees deposited to the credit of the account under  
8 this subchapter; and

9 (2) money transferred or appropriated to the account  
10 by the legislature.

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

14 (1) the storage of medical records by the department;  
15 and

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

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

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

26 (c) The department shall suspend collection of the fee for  
27 the duration of a period during which the balance of the hospital

1 perpetual care account is \$5 million or more.

2 SECTION 7. (a) The executive commissioner of the Health and  
3 Human Services Commission shall adopt the rules required by Chapter  
4 241, Health and Safety Code, as amended by this Act, not later than  
5 May 1, 2018.

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

18 (c) Notwithstanding Section 6(e)(2)(B), Chapter 615 (S.B.  
19 1367), Acts of the 83rd Legislature, Regular Session, 2013, on  
20 January 1, 2018, the commissioner of insurance shall transfer \$5  
21 million from the fund established under Subchapter F, Chapter 1508,  
22 Insurance Code, to the hospital perpetual care account established  
23 under Section 241.091, Health and Safety Code, as added by this Act.

24 SECTION 8. This Act takes effect immediately if it receives  
25 a vote of two-thirds of all the members elected to each house, as  
26 provided by Section 39, Article III, Texas Constitution. If this  
27 Act does not receive the vote necessary for immediate effect, this

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1 Act takes effect September 1, 2017.