

By: Hall

S.B. No. 297

A BILL TO BE ENTITLED

AN ACT

relating to hospital patients' rights and hospital policies and procedures; providing an administrative penalty.

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

SECTION 1. Chapter 241, Health and Safety Code, is amended by adding Subchapter M to read as follows:

SUBCHAPTER M. HOSPITAL PATIENTS' RIGHTS; HOSPITAL POLICIES AND PROCEDURES RELATED TO PATIENTS' RIGHTS

Sec. 241.401. DEFINITION. In this subchapter, "hospital" includes a hospital providing comprehensive medical rehabilitation services, chemical dependency services, and mental health services.

Sec. 241.402. PATIENTS' RIGHTS POLICY. (a) Each hospital shall adopt, implement, and enforce a written policy to ensure the rights of the hospital's patients. The policy must provide that each patient has a right to:

(1) the hospital's reasonable response to the patient's requests and needs for treatment or service, to the extent the request or need is within the hospital's capacity and stated mission and is allowed by law;

(2) considerate and respectful care that accounts for the psychosocial, spiritual, and cultural variables influencing the perceptions of illness without any bullying or shaming by hospital or medical staff;

1 (3) to the extent feasible, treatment by the patient's
2 choice of physician;

3 (4) unrestricted visitation by at least one individual
4 at any given time, including during a qualifying period of disaster
5 as provided by Section 241.012;

6 (5) use as prescribed by the patient's physician of
7 choice of:

8 (A) a prescription drug the United States Food
9 and Drug Administration has approved for use but prescribed for a
10 use other than the approved use; or

11 (B) a complementary or alternative medical
12 treatment, regardless of the United States Food and Drug
13 Administration's approval of the treatment;

14 (6) for terminally ill patients, access and use
15 certain investigational drugs, biological products, and devices
16 that are in clinical trials in accordance with this state's Right to
17 Try Act under Chapter 489, including to the extent allowed by
18 federal law during a qualifying period of disaster as defined by
19 Section 241.012(a);

20 (7) care that optimizes the comfort and dignity of a
21 patient who is dying through:

22 (A) treating primary and secondary symptoms that
23 are responsive to treatment as the patient or the patient's
24 surrogate decision-maker determines;

25 (B) effectively managing pain; and

26 (C) acknowledging the psychosocial and spiritual
27 concerns of the patient and the patient's family regarding dying

1 and the expression of grief by the patient and the patient's family;

2 (8) in collaboration with the patient's physician,
3 make decisions involving the patient's health care, including the
4 right to:

5 (A) accept or refuse treatment to the extent
6 permitted by law and be informed of the medical consequence of
7 refusing treatment;

8 (B) execute an advanced directive and
9 periodically review the directive as provided by Section 241.407;

10 (C) appoint a surrogate to make health care
11 decisions on the patient's behalf; and

12 (D) receive care that is not conditioned on the
13 existence of the directive;

14 (9) be provided information necessary for the patient
15 to make informed treatment decisions that reflect the patient's
16 wishes;

17 (10) be provided at the time of admission information
18 about the hospital's:

19 (A) patients' rights policy; and

20 (B) process for initiating, reviewing, and
21 resolving as feasible patient complaints about quality of care;

22 (11) participate or have the patient's designated
23 surrogate decision-maker participate in the consideration of
24 ethical issues arising in the patient's care;

25 (12) be informed of any human experimentation or other
26 research or educational project that affects the patient's care or
27 treatment;

1 (13) personal privacy and confidentiality of the
2 patient's information to the extent permitted by law; and

3 (14) access the information contained in the patient's
4 medical records.

5 (b) To the extent allowed by law, a patient's guardian, next
6 of kin, or other legally authorized surrogate decision-maker has
7 the right to exercise the patient's rights under Subsection (a) if
8 the patient:

9 (1) has been found to be incompetent by a court of law;

10 (2) is found by the patient's physician to be medically
11 incapable of understanding the proposed procedure or treatment;

12 (3) is unable to communicate the patient's wishes
13 regarding treatment; or

14 (4) is a minor.

15 Sec. 241.403. PATIENTS' RIGHTS POLICY FOR HOSPITALS
16 PROVIDING COMPREHENSIVE MEDICAL REHABILITATION SERVICES. A
17 hospital providing comprehensive medical rehabilitation services
18 must include in the hospital's patients' rights policy adopted
19 under Section 241.402 that each minor patient has the right to:

20 (1) appropriate treatment in the least restrictive
21 setting available;

22 (2) decline unnecessary or excessive medication;

23 (3) an individualized treatment plan that is developed
24 with the patient's participation;

25 (4) a humane treatment environment that provides
26 reasonable protection from harm and appropriate privacy for
27 personal needs;

1 (5) accommodations separated from adult patient
2 accommodations; and

3 (6) regular communication with the patient's family.

4 Sec. 241.404. EFFECT ON OTHER REQUIREMENTS FOR CERTAIN
5 HOSPITALS. A hospital patients' rights policy adopted under this
6 subchapter by a hospital providing chemical dependency services or
7 mental health services is in addition to any other patients' rights
8 policy required by law or commission rules.

9 Sec. 241.405. REQUIRED DISPLAY OF PATIENTS' RIGHTS POLICY.

10 (a) A hospital shall prominently and conspicuously display the
11 hospital's patients' rights policy in a public area of the hospital
12 that is readily accessible to patients, residents, visitors, and
13 employees.

14 (b) A hospital that provides comprehensive medical
15 rehabilitation services, chemical dependency services, or mental
16 health services must display the patients' rights policy in English
17 and in a language other than English that is appropriate to the
18 demographic composition of the community the hospital serves.

19 Sec. 241.406. NOTICE OF PATIENTS' RIGHTS BY HOSPITAL
20 PROVIDING COMPREHENSIVE MEDICAL REHABILITATION SERVICES. (a) This
21 section applies only to a hospital that provides comprehensive
22 medical rehabilitation services.

23 (b) Before admitting or accepting for evaluation any
24 patient, a hospital to which this section applies shall provide to
25 the patient and, if applicable, to the patient's parent, managing
26 conservator, or guardian, a written copy of the hospital's
27 patients' rights policy and as feasible provide the copy in the

1 patient's primary language.

2 (c) The hospital shall ensure that within two hours, or as
3 soon as reasonably possible within eight hours, after the time a
4 patient is admitted to the hospital, the hospital's patients'
5 rights policy is orally explained to the patient or, if
6 appropriate, the patient's parent, managing conservator, or
7 guardian. The explanation must be given in simple nontechnical
8 terms and as feasible in the individual's primary language. The
9 hospital may use other reasonable means to explain the policy to an
10 individual with a vision or hearing impairment.

11 (d) Except as provided by Subsection (e), the hospital shall
12 obtain a copy of the hospital's patients' rights policy signed by
13 the patient or, if appropriate, the patient's parent, managing
14 conservator, or guardian. The signed copy must:

15 (1) include a statement by the patient or other
16 individual acknowledging the patient or individual read the policy
17 and understands the specified rights; and

18 (2) be placed in the patient's medical record.

19 (e) If a patient is unable to comprehend the information
20 contained in the hospital's patients' rights policy because of
21 illness, age, or other factors, an emergency precludes a timely
22 explanation of the policy, or the patient refuses to sign the policy
23 as required under Subsection (d), the hospital may satisfy the
24 requirements of Subsections (c) and (d) by:

25 (1) explaining the policy to the patient with two
26 hospital staff members serving as witnesses; and

27 (2) placing the unsigned copy in the patient's medical

1 record with a written notation signed by the witnesses explaining
2 the reason the patient did not sign the policy.

3 Sec. 241.407. ADVANCED DIRECTIVE PROCEDURES. A hospital
4 shall:

5 (1) establish procedures for:

6 (A) determining at the time a patient is admitted
7 to the hospital whether the patient has executed an advanced
8 directive; and

9 (B) if appropriate, assisting in the development
10 of an advanced directive for the patient;

11 (2) include any executed advanced directive in the
12 patient's medical record; and

13 (3) periodically review the patient's advanced
14 directive with the patient or the patient's surrogate
15 decision-maker, as appropriate.

16 Sec. 241.408. POLICY ON INFORMED TREATMENT DECISIONS. A
17 hospital shall adopt, implement, and enforce a written policy for
18 ensuring a patient makes informed treatment decisions. The policy
19 must be consistent with state and federal law and any other
20 applicable legal requirements.

21 Sec. 241.409. ETHICAL ISSUES FOR PATIENT CARE. A hospital
22 shall establish procedures for considering ethical issues that
23 arise in a patient's care and provide education on health care
24 ethical issues to patients and their caregivers.

25 Sec. 241.410. ADMINISTRATIVE PENALTY. (a) The commission
26 shall assess an administrative penalty in the amount of \$1,000
27 against a hospital for each violation of this subchapter or rules

1 adopted under this subchapter. Each day a violation continues or
2 occurs may be considered a separate violation for purposes of
3 imposing a penalty.

4 (b) The enforcement of the penalty may be stayed during the
5 time the order is under judicial review if the hospital pays the
6 penalty to the clerk of the court or files a supersedeas bond with
7 the court in the amount of the penalty.

8 (c) The attorney general may sue to collect the penalty.

9 (d) A proceeding to impose the penalty is considered to be a
10 contested case under Chapter 2001, Government Code.

11 Sec. 241.411. RULES. The executive commissioner shall
12 adopt rules to implement this subchapter.

13 SECTION 2. Section 164.009(a), Health and Safety Code, is
14 amended to read as follows:

15 (a) A treatment facility may not admit a patient to its
16 facilities without fully disclosing to the patient or, if the
17 patient is a minor, the patient's parent, managing conservator, or
18 guardian, in, if possible, the primary language of the patient,
19 managing conservator, or guardian, as the case may be, the
20 following information in writing before admission:

21 (1) the treatment facility's estimated average daily
22 charge for inpatient treatment with an explanation that the patient
23 may be billed separately for services provided by mental health
24 professionals;

25 (2) the name of the attending physician, if the
26 treatment facility is a mental health facility, or the name of the
27 attending mental health professional, if the facility is a chemical

1 dependency facility; and

2 (3) the current patients' rights policy as required
3 under Subchapter M, Chapter 241, and any [~~patient's bill of~~
4 ~~rights" as adopted by the executive commissioner that sets out~~]
5 restrictions to the patient's freedom that may be imposed on the
6 patient during the patient's stay in a treatment facility.

7 SECTION 3. Section 241.004, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 241.004. EXEMPTIONS. Except as otherwise provided by
10 Subchapter M, this [~~This~~] chapter does not apply to a facility:

- 11 (1) licensed under Chapter 242 or 577;
12 (2) maintained or operated by the federal government
13 or an agency of the federal government; or
14 (3) maintained or operated by this state or an agency
15 of this state.

16 SECTION 4. Sections 321.002(a) and (b), Health and Safety
17 Code, are amended to read as follows:

18 (a) The executive commissioner by rule shall adopt a
19 "patient's bill of rights" that includes the applicable rights
20 included in this chapter, the rights described by Subchapter M,
21 Chapter 241, and other rights provided by Subtitle C of Title 7,
22 Chapters 241, 462, 464, and 466, and any other provisions the
23 executive commissioner considers necessary to protect the health,
24 safety, and rights of a patient receiving voluntary or involuntary
25 mental health, chemical dependency, or comprehensive medical
26 rehabilitation services in an inpatient facility. In addition,
27 the executive commissioner shall adopt rules that[+]

1 ~~[(1)]~~ provide standards to prevent the admission of a
2 minor to a facility for treatment of a condition that is not
3 generally recognized as responsive to treatment in an inpatient
4 treatment setting~~[, and~~

5 ~~[(2) prescribe the procedure for presenting the~~
6 ~~applicable bill of rights and obtaining each necessary signature~~
7 ~~if:~~

8 ~~[(A) the patient cannot comprehend the~~
9 ~~information because of illness, age, or other factors; or~~

10 ~~[(B) an emergency exists that precludes~~
11 ~~immediate presentation of the information].~~

12 (b) The executive commissioner by rule shall adopt a
13 "children's bill of rights" for a minor receiving treatment in a
14 child-care facility for an emotional, mental health, or chemical
15 dependency problem that includes the rights described by Subchapter
16 M, Chapter 241.

17 SECTION 5. Sections 321.002(c), (d), and (f), Health and
18 Safety Code, are repealed.

19 SECTION 6. (a) Notwithstanding Subchapter M, Chapter 241,
20 Health and Safety Code, as added by this Act, a hospital is not
21 required to comply with that subchapter until January 1, 2024.

22 (b) As soon as practicable after the effective date of this
23 Act, the executive commissioner of the Health and Human Services
24 Commission shall adopt the rules necessary to implement Subchapter
25 M, Chapter 241, Health and Safety Code, as added by this Act.

26 SECTION 7. This Act takes effect immediately if it receives
27 a vote of two-thirds of all the members elected to each house, as

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1 provided by Section 39, Article III, Texas Constitution. If this
2 Act does not receive the vote necessary for immediate effect, this
3 Act takes effect September 1, 2023.