

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

29 MAY 2009
Date

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 1357 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Bob Deuell
Bob Deuell, Chair

Leticia VandePutte
Leticia VandePutte

Dan Patrick
Dan Patrick

Tommy Williams
Carlos Vresti
On the part of the Senate

Carl Iselt
Carl Iselt - Chair

Tara Rios Ybarra
TARA Rios Ybarra

Susan King
Susan King

Jolie Laursen
Jolie Laursen

James McReynolds
On the part of the House

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 1357

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the regulation of freestanding emergency medical care
3 facilities; providing an administrative penalty; creating an
4 offense.

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

6 SECTION 1. Subtitle B, Title 4, Health and Safety Code, is
7 amended by adding Chapter 254 to read as follows:

8 CHAPTER 254. FREESTANDING EMERGENCY MEDICAL CARE FACILITIES

9 SUBCHAPTER A. GENERAL PROVISIONS

10 Sec. 254.001. DEFINITIONS. In this chapter:

11 (1) "Department" means the Department of State Health
12 Services.

13 (2) "Emergency care" has the meaning assigned by
14 Sections 843.002 and 1301.155, Insurance Code.

15 (3) "Executive commissioner" means the executive
16 commissioner of the Health and Human Services Commission.

17 (4) "Facility" means a freestanding emergency medical
18 care facility.

19 (5) "Freestanding emergency medical care facility"
20 means a facility, structurally separate and distinct from a
21 hospital that receives an individual and provides emergency care,
22 as defined by Subsection (2).

23 [Section 254.002-254.050 reserved for expansion]

SUBCHAPTER B. LICENSING

1
2 Sec. 254.051. LICENSE REQUIRED. (a) Except as provided by
3 Section 254.052, a person may not establish or operate a
4 freestanding emergency medical care facility in this state without
5 a license issued under this chapter.

6 (b) Except as provided by Section 254.052, a facility or
7 person may not hold itself out to the public as a freestanding
8 emergency medical care facility or use any similar term, as defined
9 by department rule, that would give the impression that the
10 facility or person is providing emergency care unless the facility
11 or person holds a license issued under this chapter. The use of the
12 term "emergency" or a similar term is also subject to Section
13 254.152.

14 (c) Each separate facility location must have a separate
15 license.

16 (d) A license issued under this chapter is not transferable
17 or assignable.

18 (e) The executive commissioner by rule shall establish a
19 classification for a facility that is in continuous operation 24
20 hours per day and 7 days per week and a classification for a
21 facility that is in operation 7 days per week and at least 12 hours
22 per day.

23 (f) A facility that is not in continuous operation 24 hours
24 per day and 7 days per week cannot be issued a license with a term
25 that extends beyond August 31, 2013.

26 Sec. 254.052. EXEMPTIONS FROM LICENSING REQUIREMENT. The
27 following facilities are not required to be licensed under this

1 chapter:

2 (1) an office or clinic owned and operated by a
3 manufacturing facility solely for the purposes of treating its
4 employees and contractors;

5 (2) temporary emergency clinics in disaster areas;

6 (3) an office or clinic of a licensed physician,
7 dentist, optometrist, or podiatrist;

8 (4) a licensed nursing home;

9 (5) a licensed hospital;

10 (6) a hospital that is owned and operated by this
11 state;

12 (7) a facility located within or connected to a
13 hospital described by Subsection (5) or (6);

14 (8) a facility that is owned or operated by a hospital
15 described by Subsection (5) or (6) and is:

16 (A) surveyed as a service of the hospital by an
17 organization that has been granted deeming authority as a national
18 accreditation program for hospitals by the Centers for Medicare and
19 Medicaid Services; or

20 (B) granted provider-based status by the Centers
21 for Medicare and Medicaid Services; or

22 (9) a licensed ambulatory surgical center.

23 Sec. 254.053. LICENSE APPLICATION AND ISSUANCE. (a) An
24 applicant for a license under this chapter must submit an
25 application to the department on a form prescribed by the
26 department.

27 (b) Each application must be accompanied by a nonrefundable

1 license fee in an amount set by the executive commissioner.

2 (c) The application must contain evidence that there is at
3 least one physician and one nurse on the staff of the facility who
4 are licensed by the appropriate state licensing board.

5 (d) The application must contain evidence that the facility
6 meets the minimum standards and requirements specified in Section
7 254.151.

8 (e) The department shall issue a license if, after
9 inspection and investigation, it finds that the applicant and the
10 facility meet the requirements of this chapter and the standards
11 adopted under this chapter.

12 (f) The license fee must be paid annually on renewal of the
13 license.

14 [Sections 254.054-254.100 reserved for expansion]

15 SUBCHAPTER C. EXECUTIVE COMMISSIONER AND DEPARTMENT POWERS AND
16 DUTIES

17 Sec. 254.101. ADOPTION OF RULES. The executive
18 commissioner shall adopt rules necessary to implement this chapter,
19 including requirements for the issuance, renewal, denial,
20 suspension, and revocation of a license to operate a facility.

21 Sec. 254.102. FEES. The executive commissioner shall set
22 fees imposed by this chapter in amounts reasonable and necessary to
23 defray the cost of administering this chapter.

24 Sec. 254.103. INSPECTIONS. The department may inspect a
25 facility at reasonable times as necessary to ensure compliance with
26 this chapter.

27 Sec. 254.104. FREESTANDING EMERGENCY MEDICAL CARE FACILITY

1 LICENSING FUND. All fees collected under this chapter shall be
2 deposited in the state treasury to the credit of the freestanding
3 emergency medical care facility licensing fund and may be
4 appropriated to the department only to administer and enforce this
5 chapter.

6 [Sections 254.105-254.150 reserved for expansion]

7 SUBCHAPTER D. REGULATION OF FACILITIES

8 Sec. 254.151. MINIMUM STANDARDS. (a) The executive
9 commissioner shall adopt rules necessary to implement this chapter,
10 including minimum standards for:

11 (1) the construction and design of the facility,
12 including plumbing, heating, lighting, ventilation, and other
13 design standards necessary to ensure the health and safety of
14 patients;

15 (2) the number, qualifications, and organization of
16 the professional staff and other personnel;

17 (3) the administration of the facility;

18 (4) the equipment essential to the health and welfare
19 of the patients;

20 (5) the sanitary and hygienic conditions within the
21 facility and its surroundings;

22 (6) the requirements for the contents, maintenance,
23 and release of medical records;

24 (7) the minimal level of care and standards for denial
25 of care;

26 (8) the provision of laboratory and radiological
27 services;

- 1 (9) the distribution and administration of drugs and
2 controlled substances;
- 3 (10) a quality assurance program for patient care;
- 4 (11) disclosure, if applicable, of the following:
- 5 (A) the name and social security number of the
6 sole proprietor, if the facility is a sole proprietor;
- 7 (B) the name and social security number of each
8 general partner who is an individual, if the facility is a
9 partnership;
- 10 (C) the name and social security number of any
11 individual who has an ownership interest of more than 25 percent in
12 the corporation, if the facility is a corporation; and
- 13 (D) the name and license numbers of any
14 physicians licensed by the Texas Medical Board who have a financial
15 interest in the facility or any entity which has an ownership
16 interest in the facility;
- 17 (12) transfer protocols for patients requiring
18 advanced medical care at a hospital; and
- 19 (13) any other aspect of the operation of a facility
20 that the executive commissioner considers necessary to protect the
21 facility's patients and the public.
- 22 (b) In adopting the rules required under Subsection (a)
23 concerning transfer protocols, the executive commissioner must
24 consult with physicians who provide emergency care, medical
25 consultant organizations, and organizations representing hospitals
26 licensed in this state.
- 27 (c) The minimum standards under this section shall apply to

1 facilities operating 24 hours a day and 7 days per week and
2 facilities operating less than 24 hours a day and 7 days per week.

3 Sec. 254.152. FACILITIES NOT IN CONTINUOUS OPERATION.

4 (a) A facility that is not in continuous operation shall display a
5 clearly visible sign that:

6 (1) indicates whether the facility is open or closed;

7 (2) provides information regarding the facility's
8 operating hours; and

9 (3) provides clear instructions directing a patient to
10 an emergency room in a licensed hospital or a freestanding
11 emergency room classified as a facility that is in continuous
12 operation within 10 miles of the facility that is not in continuous
13 operation.

14 (b) A facility that is not in continuous operation may not
15 advertise, market, or otherwise promote the services provided by
16 the facility using the term "emergency" or any similar term defined
17 by department rule.

18 (c) Notwithstanding Subsection (b), a facility that is not
19 in continuous operation is not required to comply with Subsection
20 (b) until the earlier of the second anniversary of the date the
21 facility is issued a license under this chapter or September 1,
22 2012. This subsection expires January 1, 2013.

23 (d) This section expires August 31, 2013.

24 Sec. 254.153. FACILITY CARE REQUIREMENTS. (a) A facility
25 shall provide to each facility patient, without regard to the
26 individual's ability to pay, an appropriate medical screening,
27 examination, and stabilization within the facility's capability,

1 including ancillary services routinely available to the facility,
2 to determine whether an emergency medical condition exists and any
3 necessary stabilizing treatment.

4 (b) Before a facility accepts any patient for treatment or
5 diagnosis, the facility shall enter into a referral, transmission,
6 or admission agreement with a hospital licensed in this state.

7 Sec. 254.154. COMPLAINTS. A person may file a complaint
8 with the department against a facility licensed under this chapter.

9 [Sections 254.155-254.200 reserved for expansion]

10 SUBCHAPTER E. ENFORCEMENT AND PENALTIES

11 Sec. 254.201. DENIAL, SUSPENSION, PROBATION, OR REVOCATION
12 OF LICENSE. (a) The department may deny, suspend, or revoke a
13 license for a violation of this chapter or a rule adopted under this
14 chapter.

15 (b) The denial, suspension, or revocation of a license by
16 the department and the appeal from that action are governed by the
17 procedures for a contested case hearing under Chapter 2001,
18 Government Code.

19 (c) If the department finds that a facility is in repeated
20 noncompliance with this chapter or rules adopted under this chapter
21 but that the noncompliance does not endanger public health and
22 safety, the department may schedule the facility for probation
23 rather than suspending or revoking the facility's license. The
24 department shall provide notice to the facility of the probation
25 and of the items of noncompliance not later than the 10th day before
26 the date the probation period begins. The department shall
27 designate a period of not less than 30 days during which the

1 facility remains under probation. During the probation period, the
2 facility must correct the items that were in noncompliance and
3 report the corrections to the department for approval.

4 (d) The department may suspend or revoke the license of a
5 facility that does not correct items that were in noncompliance or
6 that does not comply with this chapter or the rules adopted under
7 this chapter within the applicable probation period.

8 Sec. 254.202. EMERGENCY SUSPENSION. (a) The department
9 may issue an emergency order to suspend a license issued under this
10 chapter if the department has reasonable cause to believe that the
11 conduct of a license holder creates an immediate danger to the
12 public health and safety.

13 (b) An emergency suspension under this section is effective
14 immediately without a hearing on notice to the license holder.

15 (c) On written request of the license holder, the department
16 shall conduct a hearing not earlier than the 10th day or later than
17 the 30th day after the date the hearing request is received to
18 determine if the emergency suspension is to be continued, modified,
19 or rescinded.

20 (d) A hearing and any appeal under this section are governed
21 by the department's rules for a contested care hearing and Chapter
22 2001, Government Code.

23 Sec. 254.203. INJUNCTION. (a) The department may petition
24 a district court for a temporary restraining order to restrain a
25 continuing violation of the standards or licensing requirements
26 provided under this chapter if the department finds that the
27 violation creates an immediate threat to the health and safety of

1 the patients of a facility.

2 (b) A district court, on petition of the department and on a
3 finding by the court that a person is violating the standards or
4 licensing requirements provided under this chapter, may by
5 injunction:

6 (1) prohibit a person from continuing a violation of
7 the standards or licensing requirements provided under this
8 chapter;

9 (2) restrain or prevent the establishment or operation
10 of a facility without a license issued under this chapter; or

11 (3) grant any other injunctive relief warranted by the
12 facts.

13 (c) The attorney general shall institute and conduct a suit
14 authorized by this section at the request of the department.

15 (d) Venue for a suit brought under this section is in the
16 county in which the facility is located or in Travis County.

17 Sec. 254.204. CRIMINAL PENALTY. (a) A person commits an
18 offense if the person violates Section 254.051.

19 (b) An offense under this section is a Class C misdemeanor.

20 (c) Each day of a continuing violation constitutes a
21 separate offense.

22 Sec. 254.205. IMPOSITION OF ADMINISTRATIVE PENALTY.

23 (a) The department may impose an administrative penalty on a
24 person licensed under this chapter who violates this chapter or a
25 rule or order adopted under this chapter. A penalty collected under
26 this section or Section 254.206 shall be deposited in the state
27 treasury in the general revenue fund.

1 (b) A proceeding to impose the penalty is considered to be a
2 contested case under Chapter 2001, Government Code.

3 (c) The amount of the penalty may not exceed \$1,000 for each
4 violation, and each day a violation continues or occurs is a
5 separate violation for purposes of imposing a penalty. The total
6 amount of the penalty assessed for a violation continuing or
7 occurring on separate days under this subsection may not exceed
8 \$5,000.

9 (d) The amount shall be based on:

10 (1) the seriousness of the violation, including the
11 nature, circumstances, extent, and gravity of the violation;

12 (2) the threat to health or safety caused by the
13 violation;

14 (3) the history of previous violations;

15 (4) the amount necessary to deter a future violation;

16 (5) whether the violator demonstrated good faith,
17 including when applicable whether the violator made good faith
18 efforts to correct the violation; and

19 (6) any other matter that justice may require.

20 (e) If the department initially determines that a violation
21 occurred, the department shall give written notice of the report by
22 certified mail to the person.

23 (f) The notice under Subsection (e) must:

24 (1) include a brief summary of the alleged violation;

25 (2) state the amount of the recommended penalty; and

26 (3) inform the person of the person's right to a
27 hearing on the occurrence of the violation, the amount of the

1 penalty, or both.

2 (g) Within 20 days after the date the person receives the
3 notice under Subsection (e), the person in writing may:

4 (1) accept the determination and recommended penalty
5 of the department; or

6 (2) make a request for a hearing on the occurrence of
7 the violation, the amount of the penalty, or both.

8 (h) If the person accepts the determination and recommended
9 penalty or if the person fails to respond to the notice, the
10 commissioner of state health services by order shall approve the
11 determination and impose the recommended penalty.

12 (i) If the person requests a hearing, the commissioner of
13 state health services shall refer the matter to the State Office of
14 Administrative Hearings, which shall promptly set a hearing date
15 and give written notice of the time and place of the hearing to the
16 person. An administrative law judge of the State Office of
17 Administrative Hearings shall conduct the hearing.

18 (j) The administrative law judge shall make findings of fact
19 and conclusions of law and promptly issue to the commissioner of
20 state health services a proposal for a decision about the
21 occurrence of the violation and the amount of a proposed penalty.

22 (k) Based on the findings of fact, conclusions of law, and
23 proposal for a decision, the commissioner of state health services
24 by order may:

25 (1) find that a violation occurred and impose a
26 penalty; or

27 (2) find that a violation did not occur.

1 (1) The notice of the order under Subsection (k) that is
2 sent to the person in accordance with Chapter 2001, Government
3 Code, must include a statement of the right of the person to
4 judicial review of the order.

5 Sec. 254.206. PAYMENT AND COLLECTION OF ADMINISTRATIVE
6 PENALTY; JUDICIAL REVIEW. (a) Within 30 days after the date an
7 order of the commissioner of state health services under Section
8 254.205(k) that imposes an administrative penalty becomes final,
9 the person shall:

10 (1) pay the penalty; or

11 (2) file a petition for judicial review of the
12 commissioner's order contesting the occurrence of the violation,
13 the amount of the penalty, or both.

14 (b) Within the 30-day period prescribed by Subsection (a), a
15 person who files a petition for judicial review may:

16 (1) stay enforcement of the penalty by:

17 (A) paying the penalty to the court for placement
18 in an escrow account; or

19 (B) giving the court a supersedeas bond approved
20 by the court that:

21 (i) is for the amount of the penalty; and

22 (ii) is effective until all judicial review
23 of the commissioner's order is final; or

24 (2) request the court to stay enforcement of the
25 penalty by:

26 (A) filing with the court a sworn affidavit of
27 the person stating that the person is financially unable to pay the

1 penalty and is financially unable to give the supersedeas bond; and

2 (B) sending a copy of the affidavit to the
3 executive commissioner by certified mail.

4 (c) If the commissioner of state health services receives a
5 copy of an affidavit under Subsection (b)(2), the commissioner may
6 file with the court, within five days after the date the copy is
7 received, a contest to the affidavit. The court shall hold a
8 hearing on the facts alleged in the affidavit as soon as practicable
9 and shall stay the enforcement of the penalty on finding that the
10 alleged facts are true. The person who files an affidavit has the
11 burden of proving that the person is financially unable to pay the
12 penalty or to give a supersedeas bond.

13 (d) If the person does not pay the penalty and the
14 enforcement of the penalty is not stayed, the penalty may be
15 collected. The attorney general may sue to collect the penalty.

16 (e) If the court sustains the finding that a violation
17 occurred, the court may uphold or reduce the amount of the penalty
18 and order the person to pay the full or reduced amount of the
19 penalty.

20 (f) If the court does not sustain the finding that a
21 violation occurred, the court shall order that a penalty is not
22 owed.

23 (g) If the person paid the penalty and if the amount of the
24 penalty is reduced or the penalty is not upheld by the court, the
25 court shall order, when the court's judgment becomes final, that
26 the appropriate amount plus accrued interest be remitted to the
27 person within 30 days after the date that the judgement of the court

1 becomes final. The interest accrues at the rate charged on loans to
2 depository institutions by the New York Federal Reserve Bank. The
3 interest shall be paid for the period beginning on the date the
4 penalty is paid and ending on the date the penalty is remitted.

5 (h) If the person gave a supersedeas bond and the penalty is
6 not upheld by the court, the court shall order, when the court's
7 judgment becomes final, the release of the bond. If the person gave
8 a supersedeas bond and the amount of the penalty is reduced, the
9 court shall order the release of the bond after the person pays the
10 reduced amount.

11 SECTION 2. Section 843.002, Insurance Code, is amended by
12 amending Subdivision (7) and adding Subdivision (9-a) to read as
13 follows:

14 (7) "Emergency care" means health care services
15 provided in a hospital emergency facility, freestanding emergency
16 medical care facility, or comparable emergency facility to evaluate
17 and stabilize medical conditions of a recent onset and severity,
18 including severe pain, that would lead a prudent layperson
19 possessing an average knowledge of medicine and health to believe
20 that the individual's condition, sickness, or injury is of such a
21 nature that failure to get immediate medical care could:

22 (A) place the individual's health in serious
23 jeopardy;

24 (B) result in serious impairment to bodily
25 functions;

26 (C) result in serious dysfunction of a bodily
27 organ or part;

1 (D) result in serious disfigurement; or
2 (E) for a pregnant woman, result in serious
3 jeopardy to the health of the fetus.

4 (9-a) "Freestanding emergency medical care facility"
5 means a facility licensed under Chapter 254, Health and Safety
6 Code.

7 SECTION 3. Section 1271.155(b), Insurance Code, is amended
8 to read as follows:

9 (b) A health care plan of a health maintenance organization
10 must provide the following coverage of emergency care:

11 (1) a medical screening examination or other
12 evaluation required by state or federal law necessary to determine
13 whether an emergency medical condition exists shall be provided to
14 covered enrollees in a hospital emergency facility or comparable
15 facility;

16 (2) necessary emergency care shall be provided to
17 covered enrollees, including the treatment and stabilization of an
18 emergency medical condition; and

19 (3) services originated in a hospital emergency
20 facility, freestanding emergency medical care facility, or
21 comparable emergency facility following treatment or stabilization
22 of an emergency medical condition shall be provided to covered
23 enrollees as approved by the health maintenance organization,
24 subject to Subsections (c) and (d).

25 SECTION 4. Section 1301.001, Insurance Code, is amended by
26 adding Subdivision (12) to read as follows:

27 (12) "Freestanding emergency medical care facility"

1 means a facility licensed under Chapter 254, Health and Safety
2 Code.

3 SECTION 5. Section 1301.155, Insurance Code, is amended to
4 read as follows:

5 Sec. 1301.155. EMERGENCY CARE. (a) In this section,
6 "emergency care" means health care services provided in a hospital
7 emergency facility, freestanding emergency medical care facility,
8 or comparable emergency facility to evaluate and stabilize a
9 medical condition of a recent onset and severity, including severe
10 pain, that would lead a prudent layperson possessing an average
11 knowledge of medicine and health to believe that the person's
12 condition, sickness, or injury is of such a nature that failure to
13 get immediate medical care could result in:

- 14 (1) placing the person's health in serious jeopardy;
- 15 (2) serious impairment to bodily functions;
- 16 (3) serious dysfunction of a bodily organ or part;
- 17 (4) serious disfigurement; or
- 18 (5) in the case of a pregnant woman, serious jeopardy
19 to the health of the fetus.

20 (b) If an insured cannot reasonably reach a preferred
21 provider, an insurer shall provide reimbursement for the following
22 emergency care services at the preferred level of benefits until
23 the insured can reasonably be expected to transfer to a preferred
24 provider:

- 25 (1) a medical screening examination or other
26 evaluation required by state or federal law to be provided in the
27 emergency facility of a hospital that is necessary to determine

1 whether a medical emergency condition exists;

2 (2) necessary emergency care services, including the
3 treatment and stabilization of an emergency medical condition; and

4 (3) services originating in a hospital emergency
5 facility or freestanding emergency medical care facility
6 following treatment or stabilization of an emergency medical
7 condition.

8 SECTION 6. (a) Not later than September 1, 2010, a
9 freestanding emergency medical care facility must obtain a license
10 as required by Chapter 254, Health and Safety Code, as added by this
11 Act.

12 (b) Not later than March 1, 2010, the executive commissioner
13 of the Health and Human Services Commission shall adopt rules as
14 required by Chapter 254, Health and Safety Code, as added by this
15 Act.

16 (c) The changes in law made by Sections 3, 4, and 5 of this
17 Act apply only to a health insurance policy or evidence of coverage
18 delivered, issued for delivery, or renewed on or after March 1,
19 2010. A health insurance policy or evidence of coverage delivered,
20 issued for delivery, or renewed before that date is governed by the
21 law in effect immediately before that date, and that law is
22 continued in effect for that purpose.

23 SECTION 7. (a) Except as provided by Subsections (b) and
24 (c) of this section, this Act takes effect September 1, 2009.

25 (b) Sections 254.201, 254.202, 254.203, 254.205, and
26 254.206, Health and Safety Code, as added by this Act, and Sections
27 843.002, 1271.155, 1301.001, and 1301.155, Insurance Code, as

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1 amended by this Act, take effect March 1, 2010.

2 (c) Section 254.204, Health and Safety Code, as added by
3 this Act, takes effect September 1, 2010.

House Bill 1357
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Amends Subtitle B, Title 4, Health and Safety Code, by adding Chapter 254, Freestanding Emergency Medical Care Facilities as follows:

Subchapter A. General Provisions.

Sec. 254.001. Definitions. Among other provisions, defines "emergency care" by reference to Section 843.002, Insurance Code, and defines "freestanding emergency medical care facility" to mean a facility, structurally separate and distinct from a hospital *and not affiliated with a hospital licensed under Chapter 241*, that receives an individual and provides *medical treatment or stabilization to the individual in an emergency or for a condition that requires immediate medical care*.

Subchapter B. Licensing.

Sec. 254.051. License Required, Subsections (a) - (d).

(e) Requires the executive commissioner by rule to establish a classification *and license* for a facility that is in continuous operation 24 hours per day and 7 days per week.

SENATE VERSION

SECTION 1. Substantially the same as House version, except as follows:

Subchapter A. General Provisions.

Sec. 254.001. Same as House version, except defines "emergency care" by additionally referring to Section 1301.155, Insurance Code, and defines "freestanding emergency medical care facility" as facility, structurally separate and distinct from a hospital that receives an individual and provides emergency care, *as defined by Subsection (2)*.

Subchapter B. Same as House version, except as follows:

Sec. 254.051. (a) - (b). Substantially the same as House version, except in (b) replaces a reference to emergency medical facility with a reference to a freestanding emergency medical facility.

(e) Requires the executive commissioner by rule to establish a classification for a facility that is in continuous operation 24 hours per day and 7 days per week and a classification for a facility that is in operation 7 days per week and at least 12 hours per day.

CONFERENCE

SECTION 1. Substantially the same as Senate version.

Sec. 254.001. Same as Senate version.

Subchapter B. Substantially the same as Senate version.

Sec. 254.051. (a) - (b). Same as Senate version.

(e) Same as Senate version.

House Bill 1357
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Section-by-Section Analysis

HOUSE VERSION

(f) Requires the executive commissioner by rule to establish a classification and license for a facility that is not in continuous operation 24 hours per day and 7 days per week. The minimum operating hours of a facility licensed under this subsection may not be less than 7 days each week and may not be less than 12 hours each day. This subsection and any rules adopted by the executive commissioner under this subsection expire August 31, 2013.

Sec. 254.052. Exemptions From Licensing Requirement.

Sec. 254.053. License Application and Issuance.

Subchapter C. Executive Commissioner and Department Powers and Duties. [Sections 254.101 through 254.104]

SENATE VERSION

(f) Provides that a facility that is not in continuous operation 24 hours per day and 7 days per week cannot be issued a license with a term that extends beyond August 31, 2013.

Sec. 254.052. Same as House version, except adds to the exemption a hospital that is owned and operated by this state; a facility located within or connected to a hospital described by in the Subsection; a facility that is owned or operated by a hospital described in the Subsection and is surveyed as a service of the hospital by an organization that has been granted deeming authority as a national accreditation program for hospitals by the Centers for Medicare and Medicaid Services or granted provider-based status by the Centers for Medicare and Medicaid Services.

Sec. 254.053. Same as House version, except adds a requirement that a license application *contain evidence that the facility meets the minimum standards and requirements specified in Section 254.151.*

Subchapter C. Same as House version.

CONFERENCE

(f) Same as Senate version.

Sec. 254.052. Same as Senate version.

Sec. 254.053. Substantially the same as Senate version.

Subchapter C. Same as House version.

House Bill 1357
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

Subchapter D. Regulation of Facilities.

Subchapter D. Same as House version, except as follows:

Subchapter D.

Sec. 254.151. Minimum Standards. Requires rules adopted under this chapter to contain minimum standards applicable to a facility and for certain enumerated structural, staffing, and administrative provisions.

(a) Requires the executive commissioner to adopt the rules necessary to implement this chapter, including the substantially the same minimum standards but including minimum standards for disclosure of certain categories of personal information and for any other aspect of the operation of a facility that the executive commissioner considers necessary to protect the facility's patients and the public.

Sec. 254.151. (a) Substantially the same as Senate version.

No equivalent provision.

(b) Requires the executive commissioner, in adopting the rules required under Subsection (a) concerning transfer protocols, to consult with physicians who provide emergency care, medical consultant organizations, and organizations representing hospitals licensed in this state.

(b) Same as Senate version.

No equivalent provision.

(c) Requires the minimum standards under this section to apply to facilities operating 24 hours a day and 7 days per week and facilities operating less than 24 hours a day and 7 days per week.

(c) Same as Senate version.

Sec. 254.152. Facilities Not in Continuous Operation.

Sec. 254.152. Same as House version.

Sec. 254.152. Same as House version.

Sec. 254.153. Facility Care Requirements. Requires a facility to provide to each facility patient, without regard to the individual's ability to pay, an appropriate medical

Sec. 254.153. Same as House version, except adds *stabilization* to the screening and examination provided each such patient and omits the requirement for a

Sec. 254.153. Same as Senate version.

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screening examination within the facility's capability, including ancillary services routinely available to the facility, to determine whether an emergency medical condition exists and requires a facility, before it accepts any patient for treatment or diagnosis, to enter into a referral, transmission, or admission agreement with a hospital licensed in this state that *has an emergency room*.

No equivalent provision.

Subchapter E. Enforcement And Penalties. [Sections 254.201 through 254.205]

SECTION 2. Amends Section 843.002, Insurance Code, Subdivision (7), to expand the definition of "emergency care" to include a freestanding emergency medical care facility and adds Subdivision (9-a), defining "freestanding emergency medical care facility" by reference.

SECTION 3. Amends Section 1271.155(b), Insurance Code.

SECTION 4. Amends Section 1301.001, Insurance Code, by adding Subdivision (12).

SENATE VERSION

hospital that is party to a referral, transmission, or admission agreement to have an emergency room.

Sec. 254.154. Complaints. Authorizes a person to file a complaint with the department against a facility licensed under this chapter.

Subchapter E. Same as House version.

SECTION 2. Same as House version.

SECTION 3. Same as House version.

SECTION 4. Same as House version.

CONFERENCE

Sec. 254.154. Same as Senate version.

Subchapter E. Same as House version.

SECTION 2. Same as House version.

SECTION 3. Same as House version.

SECTION 4. Same as House version.

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SECTION 5. Amends Section 1301.155, Insurance Code, Emergency Care, to expand the definition of "emergency care" to include a freestanding emergency medical care facility.

SECTION 6. (a) Requires a freestanding emergency medical care facility, not later than September 1, 2010, to obtain a license as required by Chapter 254, Health and Safety Code, as added by this Act.

(b) Requires the executive commissioner of the Health and Human Services Commission, not later than March 1, 2010, to adopt rules as required by Chapter 254, Health and Safety Code, as added by this Act.

(c) Saving provision..

(d) Prohibits the Department of State Health Services from issuing a license under Section 254.051(f), Health and Safety Code, with a license term that extends beyond August 31, 2013.

SECTION 7. (a) Except as provided by Subsections (b) and (c) of this section, this Act takes effect September 1, 2009.

(b) Sections 254.201, 254.202, 254.203, 254.205, and 254.206, Health and Safety Code, as added by this Act, and Sections 843.002, 1271.155, 1301.001, and 1301.155, Insurance Code, as amended by this Act, take effect March 1, 2010.

(c) Section 254.204, Health and Safety Code, as added by this Act, takes effect September 1, 2010.

SENATE VERSION

SECTION 5. Same as House version.

SECTION 6. Same as House version, except removes provision prohibiting the Department of State Health Services from issuing a license under Section 254.051(f), Health and Safety Code, with a license term that extends beyond August 31, 2013.

SECTION 7. Same as House version.

CONFERENCE

SECTION 5. Same as House version.

SECTION 6. Same as Senate version.

SECTION 7. Same as House version.

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The following rows were presented as the engrossed version of Senate Bill 2151 relating to ambulatory surgical centers and to the provision of services at those centers by certain designated physician groups.

No equivalent provision.

SECTION __. Section 243.002, Health and Safety Code, is amended by amending Subdivision (3) and adding Subdivisions (3-a), (3-b), and (5).

Same as House version.

No equivalent provision.

SECTION __. The heading to Section 243.003, Health and Safety Code, is amended.

Same as House version.

No equivalent provision.

SECTION __. Section 243.003, Health and Safety Code, is amended by amending Subsection (c) and adding Subsections (d), (e), (f), and (g).

Same as House version.

No equivalent provision.

SECTION __. Section 843.002, Insurance Code, is amended by adding Subdivision (1-a) and amending Subdivision (24).

Same as House version.

No equivalent provision.

SECTION __. Section 1301.001, Insurance Code, is amended by amending Subdivisions (1) and (4) and adding Subdivision (1-a).

Same as House version.

No equivalent provision.

SECTION __. Section 401.011, Labor Code, is amended by adding Subdivision (4-a) and amending Subdivision (20).

Same as House version.

No equivalent provision.

SECTION __. The change in law made by this Act

Same as House version.

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applies only to a use agreement under Section 243.003, Health and Safety Code, as amended by this Act, that is entered into on or after the effective date of this Act. A use agreement entered into before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

The following rows were presented as the engrossed version of Senate Bill 586 relating to the operation of certain managed care plans regarding out-of-network health care providers.

No equivalent provision.

SECTION __. (a) Section 843.306, Insurance Code, is amended by adding Subsection (f).
(b) Subsection (a), Section 843.363, Insurance Code, is amended.
(c) Section 1301.001, Insurance Code, is amended by adding Subdivision (5-a).
(d) Subchapter A, Chapter 1301, Insurance Code, is amended by adding Sections 1301.0051 and 1301.0052.
(e)(1) Saving provision for the changes in law made by this section applicable to an insurance policy, health maintenance organization contract, or evidence of coverage.
(2) Saving provision for Sections 843.306 and 843.363, Insurance Code, as amended.

Same as House version.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 30, 2009

TO: Honorable David Dewhurst , Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB1357** by Isett (Relating to the regulation of freestanding emergency medical care facilities; providing an administrative penalty; creating an offense.), **Conference Committee Report**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1357, Conference Committee Report: an impact of \$0 through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	\$0
2011	\$0
2012	\$0
2013	\$0
2014	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from New General Revenue Dedicated: Freestanding Emergency Medical Care Facility Licensing Fund	Probable Revenue Gain from New General Revenue Dedicated: Freestanding Emergency Medical Care Facility Licensing Fund	Change in Number of State Employees from FY 2009
2010	(\$472,653)	\$559,250	4.5
2011	(\$181,992)	\$231,125	2.5
2012	(\$181,992)	\$231,125	2.5
2013	(\$181,992)	\$231,125	2.5
2014	(\$181,992)	\$231,125	2.5

Fiscal Analysis

The bill would implement some of the recommendations presented in the Legislative Budget Board's Government Effectiveness and Efficiency Report to the Eighty-first Legislature entitled, "Regulate Emergency Care Facilities to Standardize Quality of Care."

The bill would add Chapter 254, Freestanding Emergency Medical Care Facilities, to the Health and Safety Code. It would define a freestanding emergency medical facility and prohibit establishment or operation of a facility without a license. It would prevent a facility from holding itself out to the public

as an emergency medical facility unless it holds a license. The bill would require the Executive Commissioner of the Health and Human Services Commission (HHSC) by rule to establish a classification for a facility that is in continuous operation 24 hours per day and 7 days per week and classification for a facility that is in operation 7 days per week and at least 12 hours per day. DSHS would be prohibited from issuing a license to a facility that is not in continuous operation with a term that extends beyond August 31, 2013. The subsection and rules pertaining to facilities not in continuous operation would expire August 31, 2013.

The Department of State Health Services (DSHS) would be required to issue a license by September 1, 2010, if after inspection and investigation, it finds the applicant and facility meet the requirements and standards. DSHS would be allowed to inspect a facility to ensure compliance.

The bill would require that the licensing fee be paid annually on renewal of the license. The Executive Commissioner would be required to set fees in amounts reasonable and necessary to defray the cost of administration. The bill would require that fees be deposited in the State Treasury to the credit of the freestanding emergency medical care facility licensing fund and may be appropriated to the department only to administer and enforce this chapter.

The Executive Commissioner would be required to adopt rules by March 1, 2010 to implement the chapter including requirements for the issuance, renewal, denial, suspension, and revocation of a license, and minimum standards applicable to a facility.

The bill would allow a person to file a complaint with DSHS against a facility licensed under this chapter.

The bill would allow DSHS to deny, suspend, or revoke a license including through the use of an emergency suspension for a violation of the chapter or a rule, and would require these actions and the appeal to be governed by the procedures for a contested case hearing under Chapter 2001, Government Code, Administrative Procedure. The bill would allow DSHS to petition a district court for a temporary restraining order against a freestanding emergency medical care facility. At DSHS' request, the Office of the Attorney General (OAG) would be required to institute and conduct a suit.

The bill would create a criminal penalty of a Class C misdemeanor for a person that establishes or operates a freestanding emergency medical care facility without a license. The bill would provide for administrative penalties. Proceedings to impose the penalty would be considered to be a contested case under Chapter 2001. If the person requests a hearing, DSHS would be required to refer the matter to the State Office of Administrative Hearings (SOAH) to conduct the hearing.

The bill would amend the Insurance Code to include a freestanding emergency medical care facility or comparable emergency facility in the list of facilities providing emergency care and require specified carriers to provide coverage of emergency care services provided in freestanding emergency medical care facilities or comparable emergency facilities or to provide reimbursement to a freestanding emergency medical care facility at preferred rates until a patient transfer.

The bill would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in the bill would be subject to funds consolidation review by the current Legislature.

Methodology

This analysis assumes the costs associated with adopting rules to regulate freestanding emergency medical care facilities could be absorbed by HHSC within existing resources.

DSHS assumes it would license 75 freestanding emergency care facilities. DSHS indicates there is no historical data to determine how many facilities would operate continuously and how many would operate fewer than 24 hours per day. DSHS indicates it would begin inspections on March 1, 2010.

To inspect and license facilities by September 1, 2010, DSHS indicates it would be required to hire a

total of 6 new staff members during fiscal year 2010 including 4 nurses, 1 architect, and 1 administrative assistant. To conduct complaint investigations and resurveys in fiscal year 2011 and in future years, DSHS indicates it would require 2.5 Full-Time Equivalents including 1 nurse, 0.5 architect, and 1 administrative assistant. Total staffing costs including travel for on-site inspections are \$449,153 in fiscal year 2010, and \$178,492 in fiscal year 2011 and in future years. Staffing costs are phased-in for fiscal year 2010.

DSHS indicates it will need to make a modification to its existing Health Facility Licensing integrated system to include the new license type and functions associated with the license, and that the modification will involve a one-time cost in fiscal year 2010 of \$20,000 (200 hours of contracted programming at \$100 per hour).

SOAH reports that based on the estimated number of referrals, work could be absorbed within existing resources. However, because SOAH does not receive General Revenue for work performed for DSHS, it would bill DSHS at a rate of \$100 per hour. DSHS indicates one case would be referred annually, at a cost of \$3,500. The cost to DSHS and revenue gain to SOAH result in a net neutral fiscal impact.

The bill would allow DSHS to charge a fee for a license to operate a freestanding emergency care facility. DSHS assumes the same fee would be charged for facilities that operate continuously and facilities that do not operate continuously. Because the bill does not specify the amount of the fee, the Comptroller of Public Accounts could not estimate the revenue gain. However, if an initial licensing fee of \$7,410 and a renewal fee of \$3,035 were charged and 75 facilities were licensed as assumed by DSHS, the estimated annual revenue gain would be \$555,750 in fiscal year 2010 and \$227,625 in fiscal year 2011 and subsequent years in General Revenue-Dedicated Funds. Since the bill would require DSHS to generate revenues sufficient to cover the costs of regulation, this analysis assumes that the agency would adjust fees as necessary to cover any additional costs associated with the implementation of this bill.

OAG anticipates any legal work resulting from the passage of the bill, including additional complaints, investigations, or cases, could be reasonably absorbed within existing resources.

Based on the analysis of the Texas Department of Insurance (TDI), it is assumed that there would be a one-time revenue gain of \$11,500 in the General Revenue Dedicated Account Fund 36 in fiscal year 2010 because the bill would result in additional form filings. Since General Revenue Dedicated Account Fund 36 is a self-leveling account, this analysis assumes all revenue generated would go toward fund balances or the maintenance tax would be set to recover a lower level of revenue the following year. It is also assumed that any costs realized by TDI from implementing the provisions of the bill could be absorbed within existing resources.

Technology

In costs included above, DSHS indicates it will need to make a one-time modification to its existing Health Facility Licensing integrated system at a cost of \$20,000 in fiscal year 2010.

Local Government Impact

No fiscal implication to units of local government is anticipated.

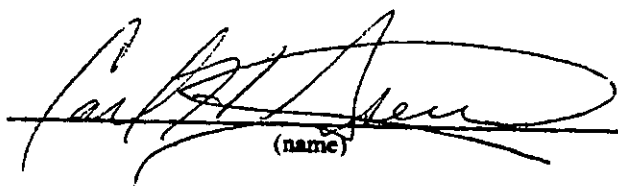
Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 360 State Office of Administrative Hearings, 454 Department of Insurance, 529 Health and Human Services Commission, 537 State Health Services, Department of

LBB Staff: JOB, CL, LL

Certification of Compliance with Rule 13, Section 6(b), House Rules of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference must be furnished to each member of the committee in person or if unable to deliver in person by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Section 10(a) of this rule. The paper copies of the report submitted to the chief clerk under Section 10(b) of this rule must contain a certificate that the requirement of this subsection has been satisfied, and that certificate must be attached to the printed copy of the report furnished to each member under Section 10(d) of this rule. Failure to comply with this subsection is not a sustainable point of order under this rule.

I certify that a copy of the conference committee report on B. 1357 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Section 10(b), Rule 13, House Rules of Procedure.


(name)

29 MAY 09
(date)