

CHAPTER 597

H.B. No. 1963

An Act relating to minimum standards concerning licensed hospitals and the transfer of a patient from one hospital to another, to the denial, suspension, and revocation of hospital licenses, and to enforcement of the hospital licensing law.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 5, Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5. (a) The Licensing Agency, with the advice of the Hospital Licensing Advisory Council, shall adopt [~~;~~ amend, promulgate,] and enforce such rules [~~;~~ regulations,] and minimum standards as may be designed to further the purposes of this Act. *Except as provided by Subsections (b) and (d) of this section, [Provided, however, that] the rules [~~;~~ regulations,] or minimum standards so adopted [~~;~~ amended, promulgated,] or enforced shall be limited to minimum requirements for staffing by physicians and nurses, hospital services relating to patient care, and safety, fire prevention, and sanitary provisions of hospitals as defined in this Act. Any [~~Provided, however, that any] rules [~~;~~ regulations,] or standards set shall [~~first] be adopted [approved] by the Texas [State] Board of Health in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The standards may not exceed the minimum standards for certification under Title XVIII of the Social Security Act [~~;~~ and after they have been so approved, shall be approved also by the Attorney General as to their legality, and then filed with the Secretary of State, and no such rule or regulation shall be effective until it has been filed with the Secretary of State].~~~~*

(b) *The Texas Board of Health shall adopt rules to implement the following minimum standards governing the transfer of patients. The rules must provide that patient transfers between hospitals should be accomplished in a medically appropriate manner from physician to physician as well as from hospital to hospital by providing for:*

(1) *notification to the receiving hospital prior to the transfer and confirmation by that hospital that the patient meets that hospital's admissions criteria relating to appropriate bed, physician, and other services necessary to treat the patient;*

(2) *the use of medically appropriate life support measures which a reasonable and prudent physician in the same or similar locality exercising ordinary care would use to stabilize the patient prior to transfer and to sustain the patient during the transfer;*

(3) *the provision of appropriate personnel and equipment which a reasonable and prudent physician in the same or similar locality exercising ordinary care would use for the transfer;*

(4) *the transfer of all necessary records for continuing the care for the patient; and*

(5) *the date by which each hospital must adopt policies in accordance with the rules.*

(c) *Minimum standards prescribed by Board rules shall not contain provisions which require the consent of the patient or personal representative of the patient prior to transfer.*

(d) *Each hospital shall adopt binding policies relating to patient transfers that are consistent with the rules adopted by the Texas Board of Health. If possible, each hospital shall implement its transfer policies by adopting transfer agreements with other hospitals.*

(e) *The Commissioner of Health shall appoint, with the advice and consent of the Texas [State] Board of Health, a person to serve in the capacity of Hospital Licensing Director. The duties of the [such] Hospital Licensing Director shall be the administration of this Act and he shall be directly responsible to the Licensing Agency. Any person so appointed as Hospital Licensing Director must possess the following qualifications: He shall have had at least five (5) years experience and/or training in the field of hospital administration, be of good moral character, and a resident of the State of Texas for a period of not less than three (3) years.*

SECTION 2. Section 7, Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. (a) Applications for licenses [~~license] shall be made to the Licensing Agency upon forms provided by it, and shall contain such information as the Licensing Agency may reasonably require. It shall be necessary that the Licensing Agency issuing licenses require that each hospital show evidence that:~~

(1) *there are one or more physicians on the medical staff of the hospital;*

(2) [~~;~~ and that] *these physicians are currently licensed by the Texas State Board of Medical Examiners; and*

(3) *the Governing Body of the hospital has adopted and implemented a patient transfer policy in accordance with Sections 5(b) and (d) of this Act.*

(b) *The Licensing Agency may require that the application be approved by the local health authority [officer], or other local official, for [the] compliance with city ordinances on building construction, fire prevention, and sanitation. Hospitals outside city limits shall comply with corresponding state laws.*

(c) *Each application shall be accompanied by a license fee and a copy of the hospital's current patient transfer policy. In the event the application for a license is denied, the [such] fee shall be refunded to the applicant.*

(d) *All license fees collected shall be deposited with the State Treasury to the credit of the Licensing Agency and said license fees are hereby appropriated to said agency for its use in the administration and enforcement of this Act.*

(e) *Each hospital [ø] licensed shall pay a license fee, both initially and annually thereafter, of Two Dollars and Fifty Cents (\$2.50) per bed; but in no event shall the total fee be less than One Hundred Dollars (\$100.00) or more than Two Thousand Dollars (\$2,000.00).*

SECTION 3. *Section 9, Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes), is revised to read as follows:*

Sec. 9. (a) The Licensing Agency may deny, suspend, or revoke a hospital's license if the Licensing Agency finds that the hospital failed substantially to comply with this Act or a rule or standard adopted under this Act or aided, abetted, or permitted the commission of an illegal act.

(b) Except as inconsistent with this section, the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) governs any action taken under this section.

(c) On application by the hospital, the Licensing Agency may reissue a license to a hospital whose license was suspended or revoked if the Licensing Agency determines that the hospital has corrected the conditions that led to the suspension or revocation. A hospital must apply for reissuance in the form and manner required by the Licensing Agency.

(d) Judicial review of a final decision by the Licensing Agency shall be by trial de novo in the same manner as cases appealed from the justice court to the county court, and the substantial evidence rule shall not apply.

SECTION 4. *The Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes) is amended by adding Sections 9B and 9C to read as follows:*

Sec. 9B. (a) If the Licensing Agency finds that a hospital is violating or has violated this Act or a rule or standard adopted under this Act, the Licensing Agency shall notify the hospital of its findings and provide the hospital the opportunity to correct the violations. After providing the hospital with notification and an opportunity to comply, the Licensing Agency may petition a district court in the county in which the violation occurred for assessment and recovery of civil penalties as provided under Subsection (d) of this section, for injunctive relief, or for both civil penalties and injunctive relief. If the Licensing Agency finds that the violation creates an immediate threat to the health and safety of the hospital patients, the Licensing Agency may petition the district court for a temporary restraining order to restrain continuing violations.

(b) The district court shall grant the injunctive relief the facts may warrant.

(c) At the request of the Commissioner of Health, the Attorney General or the appropriate district or county attorney shall initiate and conduct the suit.

(d) If a hospital does not timely adopt, implement, and enforce a patient transfer policy in accordance with Sections 5(b) and (d) of this Act, the facility is subject to a civil penalty of not more than \$1,000 for each day of violation and for each act of violation. In determining the amount of the penalty, the district court shall consider the facility's history of previous violations, the seriousness of the violation, if the health and safety of the public was threatened by the violation, and the demonstrated good faith of the facility.

Sec. 9C. A person harmed by the failure of a hospital to timely adopt, implement, or enforce a patient transfer policy in accordance with Sections 5(b) and (d) of this Act may petition the district court of the county in which the person resides, or if the person is not a resident of the state, a district court of Travis County, for appropriate injunctive relief. Such person also may pursue remedies for civil damages existing under current common law.

SECTION 5. *Section 4, Chapter 387, Acts of the 65th Legislature, Regular Session, 1977 (Article 4437h, Vernon's Texas Civil Statutes), is amended by adding Subsection (d) to read as follows:*

(d) This section does not affect the authority of the Texas Department of Health to implement and enforce the provisions of the Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes) relating to the transfer of hospital patients or the means by which the department implements and enforces those provisions.

SECTION 6. Not later than the 60th day before the date on which the 70th Legislature convenes, the Texas Board of Health shall submit a report to the legislature relating to the effectiveness of the department rules relating to hospital transfers and to the degree of compliance by hospitals in this state.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 17, 1985, by a non-record vote; House concurred in Senate amendments to H.B. No. 1963 on May 26, 1985, by a non-record vote; passed by the Senate, with amendments, on May 24, 1985, by the following vote: Yeas 31, Nays 0.

Approved: June 13, 1985

Effective: August 26, 1985