

## CHAPTER 360

## S.B. No. 427

## AN ACT

relating to the duty of nonprofit, tax-exempt hospitals to provide charity care; providing civil penalties.

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

SECTION 1. Section 311.031, Health and Safety Code, is amended to read as follows:

Sec. 311.031. DEFINITIONS. In this subchapter:

- (1) "Board" means the Texas Board of Health.
- (2) "Charity care" means the unreimbursed cost to a hospital of:
  - (A) providing, funding, or otherwise financially supporting health care services on an inpatient or outpatient basis to a person classified by the hospital as "financially indigent" or "medically indigent"; and/or
  - (B) providing, funding, or otherwise financially supporting health care services provided to financially indigent patients through other nonprofit or public outpatient clinics, hospitals, or health care organizations.
- (3) "Contractual allowances" means the difference between revenue at established rates and amounts realizable from third-party payors under contractual agreements.
- (4) "Department" means the Texas Department of Health.
- (5) "Donations" means the unreimbursed costs of providing cash and in-kind services and gifts, including facilities, equipment, personnel, and programs, to other nonprofit or public outpatient clinics, hospitals, or health care organizations.
- (6) "Education-related costs" means the unreimbursed cost to a hospital of providing, funding, or otherwise financially supporting educational benefits, services, and programs including:
  - (A) education of physicians, nurses, technicians, and other medical professionals and health care providers;
  - (B) provision of scholarships and funding to medical schools, colleges, and universities for health professions education;
  - (C) education of patients concerning diseases and home care in response to community needs; and
  - (D) community health education through informational programs, publications, and outreach activities in response to community needs.

(7) "Financially indigent" means an uninsured or underinsured person who is accepted for care with no obligation or a discounted obligation to pay for the services rendered based on the hospital's eligibility system.

(8) "Government-sponsored indigent health care" means the unreimbursed cost to a hospital of providing health care services to recipients of Medicaid and other federal, state, or local indigent health care programs, eligibility for which is based on financial need.

(9) [(3)] "Hospital" means a general or special hospital licensed under Chapter 241 (Texas Hospital Licensing Law).

(10) "Hospital eligibility system" means the financial criteria and procedure used by a hospital to determine if a patient is eligible for charity care. The system shall include income levels and means testing indexed to the federal poverty guidelines; provided, however, that a hospital may not establish an eligibility system which sets the income level eligible for charity care lower than that required by counties under Section 61.023 or higher, in the case of the financially indigent, than 200 percent of the federal poverty guidelines. A hospital may determine that a person is financially or medically indigent pursuant to the hospital's eligibility system after health care services are provided.

(11) "Medically indigent" means a person whose medical or hospital bills after payment by third-party payors exceed a specified percentage of the patient's annual gross income, determined in accordance with the hospital's eligibility system, and the person is financially unable to pay the remaining bill.

(12) "Research-related costs" means the unreimbursed cost to a hospital of providing, funding, or otherwise financially supporting facilities, equipment, and personnel for medical and clinical research conducted in response to community needs.

(13) "Subsidized health services" means those services provided by a hospital in response to community needs for which the reimbursement is less than the hospital's cost for providing the services and which must be subsidized by other hospital or nonprofit supporting entity revenue sources. Subsidized health services may include but are not limited to:

(A) emergency and trauma care;

(B) neonatal intensive care;

(C) free-standing community clinics; and

(D) collaborative efforts with local government or private agencies in preventive medicine, such as immunization programs.

(14) "Unreimbursed costs" means the costs a hospital incurs for providing services after subtracting payments received from any source for such services including but not limited to the following: third-party insurance payments; Medicare payments; Medicaid payments; Medicare education reimbursements; state reimbursements for education; payments from drug companies to pursue research; grant funds for research; and disproportionate share payments. For purposes of this definition, the term "costs" shall be calculated by applying the cost to charge ratios derived from the hospital's Medicare cost report to billed charges. Prior to January 1, 1996, for purposes of this definition, charitable contributions and grants to a hospital, including transfers from endowment or other funds controlled by the hospital or its nonprofit supporting entities, shall not be subtracted from the costs of providing services for purposes of determining unreimbursed costs. After January 1, 1996, for purposes of this definition, charitable contributions and grants to a hospital, including transfers from endowment or other funds controlled by the hospital or its nonprofit supporting entities, shall not be subtracted from the costs of providing services for purposes of determining the unreimbursed costs of charity care and government-sponsored indigent health care.

SECTION 2. Subsection (a), Section 311.033, Health and Safety Code, is amended to read as follows:

(a) A hospital shall submit to the department financial and utilization data for that hospital, including data relating to the hospital's:

(1) total gross revenue, including:

- (A) Medicare gross revenue;
  - (B) Medicaid gross revenue;
  - (C) other revenue from state programs;
  - (D) revenue from local government programs;
  - (E) local tax support;
  - (F) charitable contributions;
  - (G) other third party payments;
  - (H) gross inpatient revenue; and
  - (I) gross outpatient revenue;
- (2) total deductions from gross revenue, including:
- (A) ~~charity care~~;
  - ~~[(B) bad debt;~~
  - ~~[(C)]~~ contractual allowance; and
  - (B) ~~[(D)]~~ any other deductions;
- (3) *charity care*;
- (4) *bad debt expense*;
- (5) total admissions, including:
- (A) Medicare admissions;
  - (B) Medicaid admissions;
  - (C) admissions under a local government program;
  - (D) charity care admissions; and
  - (E) any other type of admission;
- (6) ~~[(4)]~~ total discharges;
- (7) ~~[(5)]~~ total patient days;
- (8) ~~[(6)]~~ average length of stay;
- (9) ~~[(7)]~~ total outpatient visits;
- (10) ~~[(8)]~~ total assets;
- (11) ~~[(9)]~~ total liabilities;
- (12) *estimates of unreimbursed costs of subsidized health services reported separately in the following categories:*
- (A) *emergency care and trauma care*;
  - (B) *neonatal intensive care*;
  - (C) *free-standing community clinics*;
  - (D) *collaborative efforts with local government or private agencies in preventive medicine, such as immunization programs; and*
  - (E) *other services that satisfy the definition of "subsidized health services" contained in Section 311.031(13)*;
- (13) *donations*;
- (14) *total cost of reimbursed and unreimbursed research*;
- (15) ~~[(10) total cost of reimbursed and unreimbursed care for indigent patients; and~~
- ~~[(11)] total cost of reimbursed and unreimbursed [medical] education separated into the following categories:~~
- (A) *education of physicians, nurses, technicians, and other medical professionals and health care providers*;
  - (B) *scholarships and funding to medical schools, colleges, and universities for health professions education*;

(C) education of patients concerning diseases and home care in response to community needs;

(D) community health education through informational programs, publications, and outreach activities in response to community needs; and

(E) other educational services that satisfy the definition of "education-related costs" under Section 311.031(6).

SECTION 3. Section 311.037, Health and Safety Code, is amended to read as follows:

Sec. 311.037. CONFIDENTIAL DATA; CRIMINAL PENALTY. (a) The following data reported or submitted to the department under this subchapter is confidential:

(1) data regarding a specific patient; or

(2) financial data regarding a provider or facility submitted to the department before September 1, 1987. All financial data regarding a provider or facility submitted after September 1, 1987, are no longer confidential.

(b) Before the department may disclose confidential data under this subchapter, the department must remove any information that identifies a specific patient[, provider, or facility].

(c) A person commits an offense if the person:

(1) discloses, distributes, or sells confidential data obtained under this subchapter; or

(2) violates Subsection (b).

(d) An offense under Subsection (c) is a Class B misdemeanor.

SECTION 4. Chapter 311, Health and Safety Code, is amended by adding Subchapter D to read as follows:

#### SUBCHAPTER D. DUTIES OF NONPROFIT HOSPITALS

Sec. 311.041. POLICY STATEMENT. It is the purpose of this subchapter to clarify and set forth the duties and responsibilities of nonprofit hospitals for providing community benefits that include charity care.

Sec. 311.042. DEFINITIONS. In this subchapter:

(1) "Charity care" means those amounts defined as charity care in Section 311.031(2).

(2) "Community benefits" means the unreimbursed cost to a hospital of providing charity care, government-sponsored indigent health care, donations, education, government-sponsored program services, research, and subsidized health services. Community benefits does not include the cost to the hospital of paying any taxes or other governmental assessments.

(3) "Contributions" means the dollar value of cash donations and the fair market value at the time of donation of in-kind donations to the hospital from individuals, organizations, or other entities. Contributions does not include the value of a donation designated or otherwise restricted by the donor for purposes other than charity care.

(4) "Donations" means those amounts defined as donations in Section 311.031(5).

(5) "Education-related costs" means those amounts defined as education-related costs in Section 311.031(6).

(6) "Government-sponsored indigent health care" means those amounts defined as government-sponsored indigent health care in Section 311.031(8).

(7) "Government-sponsored program unreimbursed costs" means the unreimbursed cost to the hospital of providing health care services to the beneficiaries of Medicare, the Civilian Health and Medical Program of the Uniformed Services, and other federal, state, or local government health care programs.

(8) "Net patient revenue" is an accounting term and shall be calculated in accordance with generally accepted accounting principles for hospitals.

(9)(A) "Nonprofit hospital" means a hospital that is:

(i) eligible for tax-exempt bond financing; or

(ii) exempt from state franchise, sales, ad valorem, or other state or local taxes; and

(iii) organized as a nonprofit corporation or a charitable trust under the laws of this state or any other state or country.

(B) For purposes of this subchapter, a "nonprofit hospital" shall not include a hospital that:

(i) is exempt from state franchise, sales, ad valorem, or other state or local taxes;

(ii) does not receive payment for providing health care services to any inpatients or outpatients from any source including but not limited to the patient or any person legally obligated to support the patient, third-party payors, Medicare, Medicaid, or any other federal, state, or local indigent care program; payment for providing health care services does not include charitable donations, legacies, bequests, or grants or payments for research; and

(iii) does not discriminate on the basis of inability to pay, race, color, creed, religion, or gender in its provision of services; or

(iv) is located in a county with a population under 50,000 where the entire county or the population of the entire county has been designated as a Health Professionals Shortage Area.

(10) "Nonprofit supporting entities" means nonprofit entities created by the hospital or its parent entity to further the charitable purposes of the hospital and that are owned or controlled by the hospital or its parent entity.

(11) "Research-related costs" means those amounts defined as research-related costs in Section 311.031(12).

(12) "Tax-exempt benefits" means all of the following, calculated in accordance with standard accounting principles for hospitals for tax purposes using the applicable statutes, rules, and regulations regarding the calculation of these taxes:

(A) the dollar amount of federal, state, and local taxes foregone by a nonprofit hospital and its nonprofit supporting entities. For purposes of this definition federal, state, and local taxes include income, franchise, ad valorem, and sales taxes;

(B) the dollar amount of contributions received by a nonprofit hospital and its nonprofit supporting entities; and

(C) the value of tax-exempt bond financing received by a nonprofit hospital and its nonprofit supporting entities.

(13) "Subsidized health services" means those amounts defined as subsidized health services in Section 311.031(13).

(14) "Unreimbursed costs" means costs as defined in Section 311.031(14).

**Sec. 311.043. DUTY OF NONPROFIT HOSPITALS TO PROVIDE COMMUNITY BENEFITS.** (a) A nonprofit hospital shall provide health care services to the community and shall comply with all federal, state, and local government requirements for tax exemption in order to maintain such exemption. These health care services to the community shall include charity care and government-sponsored indigent health care and may include other components of community benefits as both terms are defined in Sections 311.031 and 311.042.

(b) In order to qualify as a charitable organization under Sections 11.18(d)(1), 151.310(a)(2) and (e), and 171.063(a)(1), Tax Code, and to satisfy the requirements of this subchapter, a nonprofit hospital shall provide community benefits, which include charity care and government-sponsored indigent health care, in an amount that satisfies the requirements of Section 311.045. A determination of the amount of charity care and government-sponsored indigent health care provided by a hospital shall be based on the most recently completed and audited prior fiscal year of the hospital.

(c) Reductions in the amount of community benefits, which includes charity care and government-sponsored indigent health care, provided by a nonprofit hospital shall be considered reasonable when the financial reserves of the hospital are reduced to such a level that the hospital would be in violation of any applicable bond covenants, when necessary to

prevent the hospital from endangering its ability to continue operations, or if the hospital, as a result of a natural or other disaster, is required substantially to curtail its operations.

(d) A hospital's admissions policy must provide for the admission of financially indigent and medically indigent persons pursuant to its charity care requirements as set forth in this subchapter.

**Sec. 311.044. COMMUNITY BENEFITS PLANNING BY NONPROFIT HOSPITALS.**

(a) A nonprofit hospital shall develop:

(1) an organizational mission statement that identifies the hospital's commitment to serving the health care needs of the community; and

(2) a community benefits plan defined as an operational plan for serving the community's health care needs that sets out goals and objectives for providing community benefits that include charity care and government-sponsored indigent health care, as the terms community benefits, charity care, and government-sponsored indigent health care are defined by Sections 311.031 and 311.042, and that identifies the populations and communities served by the hospital.

(b) When developing the community benefits plan, the hospital shall consider the health care needs of the community as determined by community-wide needs assessments. For purposes of this subsection, "community" means the primary geographic area and patient categories for which the hospital provides health care services; provided, however, that the primary geographic area shall at least encompass the entire county in which the hospital is located.

(c) The hospital shall include at least the following elements in the community benefits plan:

(1) mechanisms to evaluate the plan's effectiveness, including but not limited to a method for soliciting the views of the communities served by the hospital;

(2) measurable objectives to be achieved within a specified time frame; and

(3) a budget for the plan.

**Sec. 311.045. COMMUNITY BENEFITS AND CHARITY CARE REQUIREMENTS.**

(a) A nonprofit hospital shall annually satisfy the requirements of this subchapter and of Sections 11.18(d)(1), 151.310(a)(2) and (e), and 171.063(a)(1), Tax Code, to provide community benefits which include charity care and government-sponsored indigent health care by complying with one or more of the standards set forth in Subsection (b). The hospital shall file a statement with the Bureau of State Health Data and Policy Analysis at the department, with the chief appraiser of the local appraisal district, and with the comptroller's office no later than the 120th day after the hospital's fiscal year ends, stating which of the standards in Subsection (b) have been satisfied, provided, however, that the first report shall be filed no later than the 120th day after the end of the hospital's fiscal year ending during 1994. For hospitals under the common control of a single parent corporation, the corporate parent may elect to satisfy the charity care requirements of this subchapter on a consolidated basis; however, each hospital controlled by the parent corporation shall satisfy the requirements of Sections 11.18(d)(1), 151.310(a), (c), (d), and (e), and 171.063(a)(1), Tax Code, and provide community benefits which include charity care and government-sponsored indigent health care.

(b)(1) A nonprofit hospital may elect to provide community benefits, which include charity care and government-sponsored indigent health care, according to any of the following standards:

(A) charity care and government-sponsored indigent health care are provided at a level which is reasonable in relation to the community needs, as determined through the community needs assessment, the available resources of the hospital, and the tax-exempt benefits received by the hospital;

(B) charity care and government-sponsored indigent health care are provided in an amount equal to at least four percent of the hospital's net patient revenue;

(C) charity care and government-sponsored indigent health care are provided in an amount equal to at least 100 percent of the hospital's tax-exempt benefits, excluding federal income tax;

(D) prior to January 1, 1996, charity care and community benefits are provided in a combined amount equal to at least five percent of the hospital's net patient revenue, provided that charity care and government-sponsored indigent health care are provided in an amount equal to at least three percent of net patient revenue; or

(E) after December 31, 1995, charity care and community benefits are provided in a combined amount equal to at least five percent of the hospital's net patient revenue, provided that charity care and government-sponsored indigent health care are provided in an amount equal to at least four percent of net patient revenue.

(2) A nonprofit hospital that has been designated as a disproportionate share hospital under the state Medicaid program in either of the previous two fiscal years shall be considered to have provided a reasonable amount of charity care and government-sponsored indigent health care and shall be deemed in compliance with the standards in this subsection.

(3) A nonprofit hospital that is located in a county with a population under 100,000 which has a hospital district created pursuant to Article IX, Section 5, of the Texas Constitution and Chapter 136, Acts of the 55th Legislature, Regular Session, 1957, shall not be required to comply with one or more of the standards set forth in this subsection.

(c) The providing of charity care and government-sponsored indigent health care in accordance with Subsection (b)(1)(A) shall be guided by the prudent business judgment of the hospital which will ultimately determine the appropriate level of charity care and government-sponsored indigent health care based on the community needs, the available resources of the hospital, the tax-exempt benefits received by the hospital, and other factors that may be unique to the hospital. These criteria shall not be determinative factors, but shall be guidelines contributing to the hospital's decision, along with other factors which may be unique to the hospital. The standards set forth in Subsections (b)(1)(B), (b)(1)(C), (b)(1)(D), and (b)(1)(E) shall also not be considered determinative of the amount of charity care and government-sponsored indigent health care that will be considered reasonable under Subsection (b)(1)(A).

(d) In any fiscal year that a hospital, through unintended miscalculation, fails to meet any of the standards in Subsection (b), the hospital shall not lose its tax-exempt status without the opportunity to cure the miscalculation in the fiscal year following the fiscal year the failure is discovered by both meeting one of the standards and providing an additional amount of charity care and government-sponsored indigent health care that is equal to the shortfall from the previous fiscal year. A hospital may apply this provision only once every five years.

Sec. 311.046. ANNUAL REPORT OF COMMUNITY BENEFITS PLAN. (a) A nonprofit hospital shall prepare an annual report of the community benefits plan and shall include in the report at least the following information:

(1) the hospital's mission statement;

(2) a disclosure of the health care needs of the community that were considered in developing the hospital's community benefits plan pursuant to Section 311.044(b); and

(3) a disclosure of the amount and types of community benefits, including charity care, actually provided. Charity care shall be reported as a separate item from other community benefits.

(b) A nonprofit hospital shall file the annual report of the community benefits plan with the Bureau of State Health Data and Policy Analysis at the department. The report shall be filed no later than 120 days after the end of the hospital's fiscal year; provided, however, that the first report shall be filed no later than 120 days after the end of the hospital's fiscal year ending during 1994.

(c) A nonprofit hospital shall prepare a statement that notifies the public that the annual report of the community benefits plan is public information; that it is filed with the department; and that it is available to the public on request from the department. The statement shall be posted in prominent places throughout the hospital, including but not limited to the emergency room waiting area and the admissions office waiting area. The statement shall also be printed in the hospital patient guide or other material that provides the patient with information about the admissions criteria of the hospital.

(d) Each hospital shall provide, to each person who seeks any health care service at the hospital, notice, in appropriate languages, if possible, about the charity care program and how to apply for charity care. Such notice shall also be conspicuously posted in the general waiting area, the waiting area for emergency services, in the business office, and in such other locations as the hospital deems likely to give notice of the charity care program.

Sec. 311.047. **PENALTIES.** The department may assess a civil penalty against a nonprofit hospital that fails to make a report of the community benefits plan as required under this subchapter. The penalty may not exceed \$1,000 for each day a report is delinquent after the date on which the report is due. No penalty may be assessed against a hospital under this subsection until 10 business days have elapsed after written notification to the hospital of its failure to file a report.

Sec. 311.048. **RIGHTS AND REMEDIES.** The rights and remedies provided for in this subchapter shall not limit, affect, change, or repeal any other statutory or common-law rights or remedies available to the state or a nonprofit hospital.

SECTION 5. Subsection (d), Section 11.18, Tax Code, is amended to read as follows:

(d) A charitable organization must be organized exclusively to perform religious, charitable, scientific, literary, or educational purposes and, except as permitted by Subsection (h) of this section, engage exclusively in performing one or more of the following charitable functions:

(1) providing medical care without regard to the beneficiaries' ability to pay, *which in the case of a nonprofit hospital means providing charity care and community benefits as set forth in Paragraph (A), (B), (C), (D), (E), or (F):*

(A) *charity care and government-sponsored indigent health care are provided at a level which is reasonable in relation to the community needs, as determined through the community needs assessment, the available resources of the hospital, and the tax-exempt benefits received by the hospital;*

(B) *charity care and government-sponsored indigent health care are provided in an amount equal to at least four percent of the hospital's net patient revenue;*

(C) *charity care and government-sponsored indigent health care are provided in an amount equal to at least 100 percent of the hospital's tax-exempt benefits, excluding federal income tax;*

(D) *a nonprofit hospital that has been designated as a disproportionate share hospital under the state Medicaid program in either of the previous two fiscal years shall be considered to have provided a reasonable amount of charity care and government-sponsored indigent health care and shall be deemed in compliance with the standards in this subsection;*

(E) *for tax years before 1996, charity care and community benefits are provided in a combined amount equal to at least five percent of the hospital's net patient revenue, provided that charity care and government-sponsored indigent health care are provided in an amount equal to at least three percent of net patient revenue; or*

(F) *for tax years after 1995, charity care and community benefits are provided in a combined amount equal to at least five percent of the hospital's net patient revenue, provided that charity care and government-sponsored indigent health care are provided in an amount equal to at least four percent of net patient revenue;*

(2) providing support or relief to orphans, delinquent, dependent, or handicapped children in need of residential care, abused or battered spouses or children in need of temporary shelter, the impoverished, or victims of natural disaster without regard to the beneficiaries' ability to pay;

(3) providing support to elderly persons or the handicapped without regard to the beneficiaries' ability to pay;

(4) preserving a historical landmark or site;

(5) promoting or operating a museum, zoo, library, theater of the dramatic arts, or symphony orchestra or choir;

(6) promoting or providing humane treatment of animals;

(7) acquiring, storing, transporting, selling, or distributing water for public use;

(8) answering fire alarms and extinguishing fires with no compensation or only nominal compensation to the members of the organization;

(9) promoting the athletic development of boys or girls under the age of 18 years;

(10) preserving or conserving wildlife;

(11) promoting educational development through loans or scholarships to students;

(12) providing halfway house services pursuant to a certification as a halfway house by the Board of Pardons and Paroles;

(13) providing permanent housing and related social, health care, and educational facilities for persons who are 62 years of age or older without regard to the residents' ability to pay;

(14) promoting or operating an art gallery, museum, or collection, in a permanent location or on tour, that is open to the public;

(15) providing for the organized solicitation and collection for distributions through gifts, grants, and agreements to nonprofit charitable, education, religious, and youth organizations that provide direct human, health, and welfare services;

(16) performing biomedical or scientific research or biomedical or scientific education for the benefit of the public; [or]

(17) operating a television station that produces or broadcasts educational, cultural, or other public interest programming and that receives grants from the Corporation for Public Broadcasting under 47 U.S.C. Section 396; or

(18) *in the case of a nonprofit hospital, providing health care services without receiving any payment for providing those services to inpatients or outpatients from any source including but not limited to the patient or person legally obligated to support the patient, third-party payors, Medicare, Medicaid, or any other state or local indigent care program. Payment for providing health care services does not include charitable donations, legacies, bequests, or grants or payment for research.*

*For purposes of this subsection, the terms "charity care," "government-sponsored indigent health care," "net patient revenue," "nonprofit hospital," and "tax-exempt benefits" have the meanings set forth in Sections 311.031 and 311.042, Health and Safety Code. A determination of the amount of community benefits and charity care and government-sponsored indigent health care provided by a hospital and the hospital's compliance with the requirements of Section 311.045, Health and Safety Code, shall be based on the most recently completed and audited prior fiscal year of the hospital.*

*The providing of charity care and government-sponsored indigent health care in accordance with Paragraph (A) of Subdivision (1) shall be guided by the prudent business judgment of the hospital which will ultimately determine the appropriate level of charity care and government-sponsored indigent health care based on the community needs, the available resources of the hospital, the tax-exempt benefits received by the hospital, and other factors that may be unique to the hospital. These criteria shall not be determinative factors, but shall be guidelines contributing to the hospital's decision along with other factors which may be unique to the hospital. The formulas contained in Paragraphs (B), (C), (E), and (F) of Subdivision (1) shall also not be considered determinative of a reasonable amount of charity care and government-sponsored indigent health care.*

*The requirements of this subsection shall not apply to the extent a hospital demonstrates that reductions in the amount of community benefits, charity care, and government-sponsored indigent health care are necessary to maintain financial reserves at a level required by a bond covenant, are necessary to prevent the hospital from endangering its ability to continue operations, or if the hospital, as a result of a natural or other disaster, is required substantially to curtail its operations.*

*In any fiscal year that a hospital, through unintended miscalculation, fails to meet any of the standards in Subdivision (1), the hospital shall not lose its tax-exempt status without the opportunity to cure the miscalculation in the fiscal year following the fiscal year the failure is discovered by both meeting one of the standards and providing an additional amount of charity care and government-sponsored indigent health care that is equal to the shortfall*

from the previous fiscal year. A hospital may apply this provision only once every five years.

SECTION 6. Section 151.310, Tax Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) A taxable item sold, leased, or rented to, or stored, used, or consumed by, any of the following organizations is exempted from the taxes imposed by this chapter:

(1) an organization created for religious, educational, or charitable purposes if no part of the net earnings of the organization benefits a private shareholder or individual and the items purchased, leased, or rented are related to the purpose of the organization, and in the case of a nonprofit hospital, the hospital does not receive any payment for providing health care services to inpatients or outpatients from any source including but not limited to the patient or person legally obligated to support the patient, third-party payors, Medicare, Medicaid, or any other state or local indigent care program. Payment for providing health care services does not include charitable donations, legacies, bequests, or grants or payments for research;

(2) an organization qualifying for an exemption from federal income taxes under Section 501(c)(3), (4), (8), (10), or (19), Internal Revenue Code, of the item sold, leased, rented, stored, used, or consumed relates to the purpose of the exempted organization and the item is not used for the personal benefit of a private stockholder or individual;

(3) a nonprofit organization engaged exclusively in providing athletic competition among persons under 19 years old if no financial benefit goes to an individual or shareholder;

(4) a company, department, or association organized for the purpose of answering fire alarms and extinguishing fires or for the purpose of answering fire alarms, extinguishing fires, and providing emergency medical services, the members of which receive no compensation or only nominal compensation for their services rendered, if the taxable item is used exclusively by the company, department, or association; or

(5) a chamber of commerce or a convention and tourist promotional agency representing at least one Texas city or county if the chamber of commerce or the agency is not organized for profit and no part of its net earnings inures to a private shareholder or other individual.

(e) A nonprofit hospital that qualifies for an exemption under Subsection (a)(2) shall provide charity care and community benefits as set forth in Subdivision (1), (2), (3), (4), (5), or (6) below:

(1) charity care and government-sponsored indigent health care are provided at a level which is reasonable in relation to the community needs, as determined through the community needs assessment, the available resources of the hospital, and the tax-exempt benefits received by the hospital;

(2) charity care and government-sponsored indigent health care are provided in an amount equal to at least four percent of the hospital's net patient revenue;

(3) charity care and government-sponsored indigent health care are provided in an amount equal to at least 100 percent of the hospital's tax-exempt benefits, excluding federal income tax; or

(4) a nonprofit hospital that has been designated as a disproportionate share hospital under the state Medicaid program in either of the previous two fiscal years shall be considered to have provided a reasonable amount of charity care and government-sponsored indigent health care and shall be deemed in compliance with the standards in this subsection;

(5) for tax periods ending before 1996, charity care and community benefits are provided in a combined amount equal to at least five percent of the hospital's net patient revenue, provided that charity care and government-sponsored indigent health care are provided in an amount equal to at least three percent of net patient revenue; or

(6) for tax periods ending after 1995, charity care and community benefits are provided in a combined amount equal to at least five percent of the hospital's net patient revenue, provided that charity care and government-sponsored indigent health care are provided in an amount equal to at least four percent of net patient revenue.

*For purposes of this subsection, the terms "charity care," "government-sponsored indigent health care," "net patient revenue," "nonprofit hospital," and "tax-exempt benefits" have the meanings set forth in Sections 311.031 and 311.042, Health and Safety Code. A determination of the amount of community benefits and charity care and government-sponsored indigent health care provided by a hospital and the hospital's compliance with the requirements of this subsection and Section 311.045, Health and Safety Code, shall be based on the most recently completed and audited prior fiscal year of the hospital.*

*The providing of charity care and government-sponsored indigent health care in accordance with Subdivision (1) shall be guided by the prudent business judgment of the hospital which will ultimately determine the appropriate level of charity care and government-sponsored indigent health care based on the community needs, the available resources of the hospital, the tax-exempt benefits received by the hospital, and other factors that may be unique to the hospital. These criteria shall not be determinative factors, but shall be guidelines contributing to the hospital's decision along with other factors which may be unique to the hospital. The formulas contained in Subdivisions (2), (3), (5), and (6) shall also not be considered determinative of a reasonable amount of charity care and government-sponsored indigent health care.*

*The requirements of this subsection shall not apply to the extent a hospital demonstrates that reductions in the amount of community benefits, charity care, and government-sponsored indigent health care are necessary to maintain financial reserves at a level required by a bond covenant, are necessary to prevent the hospital from endangering its ability to continue operations, or if the hospital, as a result of a natural or other disaster, is required substantially to curtail its operations.*

*In any fiscal year that a hospital, through unintended miscalculation, fails to meet any of the standards in this subsection, the hospital shall not lose its tax-exempt status without the opportunity to cure the miscalculation in the fiscal year following the fiscal year the failure is discovered by both meeting one of the standards and providing an additional amount of charity care and government-sponsored indigent health care that is equal to the shortfall from the previous fiscal year. A hospital may apply this provision only once every five years.*

SECTION 7. Subsection (a), Section 171.063, Tax Code, is amended to read as follows:

(a) The following corporations are exempt from the franchise tax:

(1) a nonprofit corporation exempted from the federal income tax under Section 501(c)(3), (4), (5), (6), or (7) of the Internal Revenue Code of 1954, as it existed on January 1, 1975; *which in the case of a nonprofit hospital means a hospital providing charity care and community benefits as set forth in Paragraph (A), (B), (C), (D), (E), or (F):*

*(A) charity care and government-sponsored indigent health care are provided at a level which is reasonable in relation to the community needs, as determined through the community needs assessment, the available resources of the hospital, and the tax-exempt benefits received by the hospital;*

*(B) charity care and government-sponsored indigent health care are provided in an amount equal to at least four percent of the hospital's net patient revenue;*

*(C) charity care and government-sponsored indigent health care are provided in an amount equal to at least 100 percent of the hospital's tax-exempt benefits, excluding federal income tax; or*

*(D) a nonprofit hospital that has been designated as a disproportionate share hospital under the state Medicaid program in either of the previous two fiscal years shall be considered to have provided a reasonable amount of charity care and government-sponsored indigent health care and shall be deemed in compliance with the standards in this subsection;*

*(E) for tax periods ending before 1996, charity care and community benefits are provided in a combined amount equal to at least five percent of the hospital's net patient revenue, provided that charity care and government-sponsored indigent health care are provided in an amount equal to at least three percent of net patient revenue; or*

(F) for tax periods ending after 1995, charity care and community benefits are provided in a combined amount equal to at least five percent of the hospital's net patient revenue, provided that charity care and government-sponsored indigent health care are provided in an amount equal to at least four percent of net patient revenue; or

(2) a corporation exempted under Section 501(c)(2) or (25) of the Internal Revenue Code of 1986, if the corporation or corporations for which it holds title to property is either exempt from or not subject to the franchise tax; [and]

(3) a corporation exempted from federal income tax under Section 501(c)(16), Internal Revenue Code of 1986; and

(4) a nonprofit corporation exempted from the federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, that is a nonprofit hospital and does not receive any payment for providing health care services to inpatients or outpatients from any source including but not limited to the patient or person legally obligated to support the patient, third-party payors, Medicare, Medicaid, or any other state or local indigent care program. Payment for providing health care services does not include charitable donations, legacies, bequests, or grants or payments for research.

For purposes of this subsection, the terms "charity care," "government-sponsored indigent health care," "net patient revenue," "nonprofit hospital," and "tax-exempt benefits" have the meanings set forth in Sections 311.031 and 311.042, Health and Safety Code. A determination of the amount of community benefits and charity care and government-sponsored indigent health care provided by a hospital and the hospital's compliance with the requirements of Section 311.045, Health and Safety Code, shall be based on the most recently completed and audited prior fiscal year of the hospital.

The providing of charity care and government-sponsored indigent health care in accordance with Paragraph (A) of Subdivision (1) shall be guided by the prudent business judgment of the hospital which will ultimately determine the appropriate level of charity care and government-sponsored indigent health care based on the community needs, the available resources of the hospital, the tax-exempt benefits received by the hospital, and other factors that may be unique to the hospital. These criteria shall not be determinative factors, but shall be guidelines contributing to the hospital's decision along with other factors which may be unique to the hospital. The formulas contained in Paragraphs (B), (C), (E), and (F) of Subdivision (1) shall also not be considered determinative of a reasonable amount of charity care and government-sponsored indigent health care.

The requirements of this subsection shall not apply to the extent a hospital demonstrates that reductions in the amount of community benefits, charity care, and government-sponsored indigent health care are necessary to maintain financial reserves at a level required by a bond covenant, are necessary to prevent the hospital from endangering its ability to continue operations, or if the hospital, as a result of a natural or other disaster, is required substantially to curtail its operations.

In any fiscal year that a hospital, through unintended miscalculation, fails to meet any of the standards in Subdivision (1), the hospital shall not lose its tax-exempt status without the opportunity to cure the miscalculation in the fiscal year following the fiscal year the failure is discovered by both meeting one of the standards and providing an additional amount of charity care and government-sponsored indigent health care that is equal to the shortfall from the previous fiscal year. A hospital may apply this provision only once every five years.

SECTION 8. If any provision of the amendments made to Chapter 311, Health and Safety Code, are or become invalid, illegal, or unenforceable in any respect, the remaining provisions shall not be in any way affected or impaired.

SECTION 9. This Act takes effect September 1, 1993.

SECTION 10. 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.

Passed the Senate on April 19, 1993, by a viva-voce vote; the Senate concurred in House amendment on May 23, 1993: Yeas 14, Nays 9; passed the House, with amendment, on May 21, 1993, by a non-record vote.

Approved June 2, 1993.

Effective Sept. 1, 1993.