

CHAPTER 584

S.B. No. 86

AN ACT

relating to the licensing of hospitals by the Texas Department of Health including the provision and appropriation of fees and the assessment of civil penalties and administrative penalties.

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

SECTION 1. Subsections (c) and (d), Section 241.022, Health and Safety Code, are amended to read as follows:

(c) The department shall require that each hospital show evidence that:

(1) at least one physician is on the medical staff of the hospital, including evidence that the physician is currently licensed; ~~[and]~~

(2) the governing body of the hospital~~;~~

~~[(A)]~~ has adopted and implemented a patient transfer policy in accordance with Section 241.027; and

~~(3) if the governing body has chosen to implement patient transfer agreements, it [(B)] has implemented the [patient transfer] agreements in accordance with Section 241.028 [or has complied with rules adopted under Section 241.029].~~

(d) The application must be accompanied by:

(1) a copy of the hospital's current patient transfer policy; ~~[and]~~

(2) a *nonrefundable* license fee;

(3) copies of the hospital's patient transfer agreements, unless the filing of copies has been waived by the hospital licensing director in accordance with the rules adopted under this chapter; and

(4) a copy of the most recent annual fire safety inspection report from the fire marshal in whose jurisdiction the hospital is located, ~~which shall be refunded to the applicant if the application is denied.~~

SECTION 2. Subchapter B, Chapter 241, Health and Safety Code, is amended by adding Section 241.0231 to read as follows:

Sec. 241.0231. *TEMPORARY INITIAL LICENSE.* (a) During the pendency of an application for an initial license, the department may grant a temporary initial license to the applicant.

(b) The temporary initial license is valid until the department issues or denies the initial license, but in no case for longer than six months from the date of issuance.

(c) The board shall adopt rules to govern the issuance of a temporary initial license.

SECTION 3. Section 241.025, Health and Safety Code, is amended to read as follows:

Sec. 241.025. *LICENSE FEES.* (a) The department shall charge each hospital an annual license fee for an initial license or a license renewal.

(b) The board by rule shall adopt the fees authorized by Subsection (a) according to a schedule in which the number of beds in the hospital determines the amount of the fee. The fee may not exceed \$10 [~~\$3~~] a bed, and the total fee may not be less than \$200 [~~\$100~~] or more than \$10,000 [~~\$3,000~~].

(c) The board by rule shall adopt a temporary initial license fee in an amount sufficient to cover the reasonable expense to the department of issuing the license.

(d) All license fees collected shall be deposited in the state treasury to the credit of the department ~~board~~ to administer and enforce this chapter. These fees are hereby appropriated to the department.

SECTION 4. Subsections (a), (b), and (c), Section 241.026, Health and Safety Code, are amended to read as follows:

(a) The board, with the advice of the council, shall adopt and enforce rules ~~[and minimum standards]~~ to further the purposes of this chapter. The rules at a ~~[and]~~ minimum shall address ~~[standards may relate only to]~~:

- (1) minimum requirements for staffing by physicians and nurses;
- (2) hospital services relating to patient care; ~~[and]~~
- (3) fire prevention, safety, and sanitation requirements in ~~[sanitary provisions of]~~ hospitals;
- (4) patient care and a patient bill of rights; and
- (5) compliance with other state and federal laws affecting the health, safety, and rights of hospital patients.

(b) In adopting rules, the board shall consider the conditions of participation for certification under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) and the standards of the Joint Commission on Accreditation of Healthcare Organizations and will attempt to achieve consistency with those conditions and standards. ~~[The board may not adopt standards that exceed the minimum standards for certification under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.)]~~

(c) Upon the recommendation of the hospital licensing director ~~[and the council]~~, the board by order may waive or modify the requirement of a particular provision of this Act or requirement ~~[minimum standard]~~ adopted by board rule under this section to a particular special hospital or a particular general or special hospital serving a rural community if the board determines that the waiver or modification will facilitate the creation or operation of the hospital and that the waiver or modification is in the best interests of the individuals served or to be served by the hospital.

SECTION 5. Section 241.027, Health and Safety Code, is amended by amending the section heading and Subsections (a) and (c) and adding Subsections (e) and (f) to read as follows:

Sec. 241.027. ~~[MINIMUM STANDARDS FOR]~~ PATIENT TRANSFERS. (a) The board shall adopt rules to govern ~~[implement the minimum standards governing]~~ the transfer

of patients between hospitals that do not have a transfer agreement and governing services not included in transfer agreements. ~~[The board shall base the rules on the recommendations made by the advisory committee established by Section 241.029.]~~

(c) The rules must require that if a patient at a hospital has an emergency medical condition which has not been stabilized, the hospital may not transfer the patient unless:

(1) the patient or a legally responsible person acting on the patient's behalf, after being informed of the hospital's obligations under this section and of the risk of transfer, in writing requests transfer to another medical facility;

(2) a licensed physician has signed a certification, which includes a summary of the risks and benefits, that, based on the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweigh the increased risks to the patient and, in the case of labor, to the unborn child from effecting the transfer; or

(3) if a licensed physician is not physically present in the emergency department at the time a patient is transferred, a qualified medical person has signed a certification described in Subdivision (2) after a licensed physician, in consultation with the person, has made the determination described in such clause and subsequently countersigns the certificate ~~[board may not adopt minimum standards that require the consent of the patient or the patient's personal representative before the patient is transferred].~~

(e) The rules must require that a hospital take all reasonable steps to secure the informed refusal of a patient or of a person acting on the patient's behalf to a transfer or to related examination and treatment.

(f) The rules must recognize any contractual, statutory, or regulatory obligations that may exist between a patient and a designated or mandated provider as those obligations apply to the transfer of emergency or nonemergency patients.

SECTION 6. Section 241.028, Health and Safety Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) At a minimum, a transfer agreement must provide that:

(1) transfers be accomplished in a medically appropriate manner and comply with Sections 241.027(b)(2) through (5) and Section 241.027(c);

(2) the transfer or receipt of patients in need of emergency care not be based on the individual's inability to pay for the services rendered by the transferring or receiving hospital;

(3) multiple transfer agreements be entered into by a hospital based on the type or level of medical services available at other hospitals;

(4) the hospitals recognize the right of an individual to request transfer to the care of a physician and hospital of the individual's choice;

(5) the hospitals recognize and comply with the requirements of Chapter 61 (Indigent Health Care and Treatment Act) relating to the transfer of patients to mandated providers; and

(6) consideration be given to availability of appropriate facilities, services, and staff for providing care to the patient.

(d) If a hospital transfers a patient in violation of Subsection (c)(1), (2), (4), (5), or (6), relating to required provisions for a transfer agreement, the violation is a violation of this chapter.

SECTION 7. Section 241.029, Health and Safety Code, is repealed.

SECTION 8. Section 241.051, Health and Safety Code, is amended to read as follows:

Sec. 241.051. INSPECTIONS. (a) The department may make any inspection, survey, or investigation that it considers necessary. A representative ~~[An officer, employee, or agent]~~ of the department may enter the premises of ~~[and inspect]~~ a hospital at any reasonable time to make an inspection, a survey, or an investigation to assure compliance with or prevent a violation of this chapter, the rules adopted under this chapter, an order or special order of the commissioner of health, a special license provision, a court order granting

injunctive relief, or other enforcement procedures. The department shall maintain the confidentiality of hospital records as applicable under state or federal law.

(b) The department or a representative of the department is entitled to access to all books, records, or other documents maintained by or on behalf of the hospital to the extent necessary to enforce this chapter, the rules adopted under this chapter, an order or special order of the commissioner of health, a special license provision, a court order granting injunctive relief, or other enforcement procedures.

(c) By applying for or holding a hospital license, the hospital consents to entry and inspection of the hospital by the department or a representative of the department in accordance with this chapter and the rules adopted under this chapter.

SECTION 9. Section 241.053, Health and Safety Code, is amended to read as follows:

Sec. 241.053. DENIAL OF APPLICATION, SUSPENSION, REVOCATION, OR REISSUANCE OF LICENSE. (a) The department, *after providing notice and an opportunity for a hearing to the applicant or license holder*, may deny, suspend, or revoke a hospital's license if the department finds that the hospital:

(1) failed [~~substantially~~] to comply with:

(A) a provision of this chapter;

(B) [~~or~~] a rule [~~or standard~~] adopted under this chapter;

(C) a special license condition;

(D) an order or emergency order by the commissioner of health; or

(E) another enforcement procedure permitted under this chapter;

(2) has a history of noncompliance with the rules adopted under this chapter relating to patient health, safety, and rights which reflects more than nominal noncompliance; or

(3) has aided, abetted, or permitted the commission of an illegal act.

(b) A hospital whose license is suspended or revoked may apply to the department for the reissuance of a license. The department may reissue the license if the department determines that the hospital has corrected the conditions that led to the suspension or revocation of the hospital's license, the initiation of enforcement action against the hospital, the assessment of administrative penalties, or the issuance of a court order enjoining the hospital from violations or assessing civil penalties against the hospital.

(c) A hospital must apply for reissuance in the form and manner required in the rules adopted under this chapter [~~by the department~~].

(d) *Administrative hearings required under this section shall be conducted under the board's formal hearing rules and the contested case provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments.*

(e) Judicial review of a final decision by the department is by trial de novo in the same manner as a case appealed from the justice court to the county court. The substantial evidence rule does not apply.

SECTION 10. Subchapter C, Chapter 241, Health and Safety Code, is amended by adding Section 241.0531 to read as follows:

Sec. 241.0531. COMMISSIONER'S EMERGENCY ORDERS. (a) *Following notice to the hospital and opportunity for hearing, the commissioner of health or a person designated by the commissioner may issue an emergency order, either mandatory or prohibitory in nature, in relation to the operation of a hospital licensed under this chapter if the commissioner or the commissioner's designee determines that the hospital is violating or threatening to violate this chapter, a rule adopted pursuant to this chapter, a special license provision, injunctive relief issued pursuant to Section 241.054, an order of the commissioner or the commissioner's designee, or another enforcement procedure permitted under this chapter and the provision, rule, license provision, injunctive relief, order, or enforcement procedure relates to the health or safety of the hospital's patients.*

(b) *The department shall send written notice of the hearing and shall include within the notice the time and place of the hearing. The hearing must be held within 10 days after the date of the hospital's receipt of the notice.*

(c) *The hearing shall not be governed by the contested case provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments but shall instead be held in accordance with the board's informal hearing rules.*

(d) *The order shall be effective on delivery to the hospital or at a later date specified in the order.*

SECTION 11. Section 241.055, Health and Safety Code, is amended to read as follows:

Sec. 241.055. CIVIL PENALTY. (a) A hospital shall ~~[-(1)]~~ timely adopt, implement, and enforce a patient transfer policy in accordance with Section 241.027. *A hospital may* ~~[-and (2)]~~ implement patient transfer agreements in accordance with Section 241.028 ~~[or comply with rules adopted under Section 241.029].~~

(b) A hospital that violates Subsection (a) is liable for a civil penalty of not more than \$1,000 for each day of violation and for each act of violation.

(c) In determining the amount of the penalty, the district court shall consider:

- (1) the hospital's previous violations;
- (2) the seriousness of the violation;
- (3) whether the health and safety of the public was threatened by the violation; and
- (4) the demonstrated good faith of the hospital.

SECTION 12. Subsection (a), Section 241.056, Health and Safety Code, is amended to read as follows:

(a) A person who is harmed by a violation under Section ~~241.028~~ or 241.055 may petition a district court for appropriate injunctive relief.

SECTION 13. Subchapter C, Chapter 241, Health and Safety Code, is amended by adding Section 241.058 to read as follows:

Sec. 241.058. MINOR VIOLATIONS. (a) *This chapter does not require the commissioner of health or a designee of the commissioner to report a minor violation for prosecution or the institution of any other enforcement proceeding authorized under this chapter, if the commissioner or a designee of the commissioner determines that prosecution or enforcement is not in the best interests of the persons served or to be served by the hospital.*

(b) *For the purpose of this section, a "minor violation" means a violation of this chapter, the rules adopted under this chapter, a special license provision, an order or emergency order issued by the commissioner of health or the commissioner's designee, or another enforcement procedure permitted under this chapter by a hospital that does not constitute a threat to the health, safety, and rights of the hospital's patients or other persons.*

SECTION 14. Subchapter C, Chapter 241, Health and Safety Code, is amended by adding Section 241.059 to read as follows:

Sec. 241.059. ADMINISTRATIVE PENALTY. (a) *The commissioner of health may assess an administrative penalty against a hospital that violates this chapter, a rule adopted pursuant to this chapter, a special license provision, an order or emergency order issued by the commissioner or the commissioner's designee, or another enforcement procedure permitted under this chapter.*

(b) In determining the amount of the penalty, the commissioner of health shall consider:

- (1) the hospital's previous violations;
- (2) the seriousness of the violation;
- (3) any threat to the health, safety, or rights of the hospital's patients;
- (4) the demonstrated good faith of the hospital; and
- (5) such other matters as justice may require.

(c) *The penalty may not exceed \$1,000 for each violation. Each day of a continuing violation may be considered a separate violation.*

(d) When it is determined that a violation has occurred the commissioner of health shall issue a report that states the facts on which the determination is based and the commissioner's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Within 14 days after the date the report is issued, the commissioner of health shall give written notice of the report to the person, delivered by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the commissioner of health or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the commissioner of health, the commissioner by order shall impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the commissioner of health shall set a hearing and give notice of the hearing to the person. The hearing shall be held by the department. The person conducting the hearing shall make findings of fact and conclusions of law and promptly issue to the commissioner a proposal for a decision about the occurrence of the violation and the amount of the penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the commissioner by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the commissioner of health's order given to the person under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the commissioner of health's order is final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) may:

(1) stay enforcement of the penalty by:

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

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the board's order is final; or

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

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commissioner of health by certified mail.

(l) When the commissioner of health receives a copy of an affidavit under Subsection (k)(2), he may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged

facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the commissioner of health may refer the matter to the attorney general for collection of the amount of the penalty.

(n) *Judicial review of the order of the commissioner of health:*

(1) is instituted by filing a petition as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person within 30 days after the judgment of the court becomes final. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments.

SECTION 15. Section 241.104, Health and Safety Code, is amended to read as follows:

Sec. 241.104. HOSPITAL PLAN REVIEWS. (a) The board by rule shall adopt fees for hospital plan reviews according to a schedule based on the estimated construction costs. If an estimated construction cost cannot be established, the estimated cost is \$105 per square foot.

(b) The fee schedule may not exceed the following:

	Cost of Construction	Fee	
(1)	\$ 600,000 or less	\$ 500	[250]
(2)	\$ 600,001 - \$ 2,000,000	1,000	[500]
(3)	\$ 2,000,001 - \$ 5,000,000	1,500	[750]
(4)	\$ 5,000,001 - \$10,000,000	2,000	[1,000]
(5)	\$10,000,001 and over	3,000	[1,500]

(c) The department shall charge a fee for field surveys of construction plans reviewed under this section. The board by rule shall adopt a fee schedule for the surveys that provides a minimum fee of \$100 and a maximum fee of \$400 for each survey conducted.

SECTION 16. Section 222.024, Health and Safety Code, is amended to read as follows:

Sec. 222.024. CERTIFICATION OR ACCREDITATION INSTEAD OF INSPECTION.

(a) A hospital licensed by the Texas Department of Health or the Texas Department of Mental Health and Mental Retardation is not subject to additional *annual* licensing inspections before the agency issues the hospital a license under Chapter 241 (Texas Hospital Licensing Law) or by the licensing agency while the hospital maintains:

(1) certification under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.); or

(2) accreditation from the Joint Commission on Accreditation of *Healthcare* [~~Health~~] Organizations, the American Osteopathic Association, or other national accreditation organization for the offered services.

(b) *If the Texas Department of Mental Health and Mental Retardation licenses [An agency licensing] a hospital exempt from a licensing inspection under Subsection (a), that agency shall issue a renewal license to the hospital if the hospital annually remits any applicable fees and submits a copy of the most recent inspection results report from the certification or accreditation body.*

(c) *If the Texas Department of Health licenses a hospital exempt from a licensing inspection under Subsection (a), that agency shall issue a renewal license to the hospital if the hospital annually:*

(1) *submits a complete application required by the department;*

(2) *remits any applicable fees;*

(3) *submits a copy of documentation from the certification or accreditation body showing that the hospital is certified or accredited; and*

(4) *submits a copy of the most recent fire safety inspection report from the fire marshal in whose jurisdiction the hospital is located.*

SECTION 17. Section 222.026, Health and Safety Code, is amended to read as follows:

Sec. 222.026. **COMPLAINT INVESTIGATIONS AND ENFORCEMENT AUTHORITY** [~~PATIENT TRANSFER AUTHORITY NOT AFFECTED~~]. (a) Sections 222.024, 222.025, and 222.0255 do not affect the authority of the Texas Department of Health to implement and enforce the provisions of Chapter 241 (Texas Hospital Licensing Law) to:

(1) *reinspect a hospital if a hospital applies for the reissuance of its license after a final ruling upholding the suspension or revocation of a hospital's license, the assessment of administrative or civil penalties, or the issuance of an injunction against the hospital for violations of provisions of the licensing law, rules adopted under the licensing law, special license conditions, or orders of the commissioner of health; or*

(2) *investigate a complaint against a hospital and, if appropriate, enforce the provisions of the licensing law on a finding by the department that reasonable cause exists to believe that the hospital has violated provisions of the licensing law, rules adopted under the licensing law, special license conditions, or orders of the commissioner of health; provided, however, that the department shall coordinate with the federal Health Care Financing Administration and its agents responsible for the inspection of hospitals to determine compliance with the conditions of participation under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.), so as to avoid duplicate investigations [relating to the transfer of hospital patients or the department's means of implementing and enforcing those provisions].*

(b) *The department shall by rule establish a procedure for the acceptance and timely review of complaints received from hospitals concerning the objectivity, training, and qualifications of the persons conducting the inspection.*

SECTION 18. This Act takes effect September 1, 1993.

SECTION 19. If on the effective date of this legislation the powers and duties of the Texas Board of Health, the commissioner of health, and the Texas Department of Health have been transferred to the Department of Public Health as provided for in Chapter 15, Acts of the 72nd Legislature, 1st Called Session, 1991, each reference in this Act to the Texas Board of Health, the commissioner of health, or the Texas Department of Health means the Board of Public Health, the director of the Department of Public Health, or the Department of Public Health, respectively.

SECTION 20. 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 May 3, 1993, by a viva-voce vote; passed subject to the provisions of Article III, Section 49a of the Constitution of Texas; passed the House on May 21,

1993, by a non-record vote; passed subject to the provisions of Article III, Section 49a of the Constitution of Texas.

Approved June 13, 1993.

Effective Sept. 1, 1993.