

HEALTH AND SAFETY CODE CHAPTER 244. BIRTHING CENTERS

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TITLE 4. HEALTH FACILITIES

SUBTITLE B. LICENSING OF HEALTH FACILITIES

CHAPTER 244. BIRTHING CENTERS

Sec. 244.001. SHORT TITLE. This chapter may be cited as the Texas Birthing Center Licensing Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.002. DEFINITIONS. In this chapter:

(1) "Birthing center" means a place, facility, or institution at which a woman is scheduled to give birth following a normal, uncomplicated pregnancy, but does not include a hospital or the residence of the woman giving birth.

(2) "Board" means the Texas Board of Health.

(3) "Department" means the Texas Department of Health.

(4) "Person" means an individual, firm, partnership, corporation, or association.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.003. LICENSE REQUIRED. (a) Except as provided by Section 244.004, a person may not establish or operate a birthing center in this state without an appropriate license issued under this chapter.

(b) Each birthing center must have a separate license.

(c) A license is not transferable or assignable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.004. EXEMPTIONS FROM LICENSING REQUIREMENT. The following facilities need not be licensed under this chapter:

(1) a licensed hospital;

(2) a licensed nursing home; or

(3) a licensed ambulatory surgical center.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.005. LICENSE APPLICATION AND ISSUANCE. (a) An

applicant for a birthing center license must submit an application to the department on a form prescribed by the department.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the board.

(c) The application must contain evidence that the composition of the center's staff meets the standards adopted by the board under this chapter for the level of license for which the application is submitted.

(d) The department shall issue the appropriate license if, after inspection and investigation, it finds that the applicant and the center meet the requirements of this chapter and the standards adopted under this chapter.

(e) The license fee shall be paid annually on renewal of the license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.006. INSPECTIONS. (a) The department may inspect a birthing center at reasonable times as necessary to assure compliance with this chapter.

(b) If a birthing center's failure to comply with this chapter creates a serious threat to the health and safety of the public, the department may appoint a monitor for the center to ensure compliance with this chapter. The birthing center shall be liable for the cost of the monitor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1265, Sec. 1, eff. Sept. 1, 1999.

Sec. 244.007. FEES. The board shall set fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.008. BIRTHING CENTER LICENSING FUND. All fees collected under this chapter shall be deposited in the state treasury to the credit of the birthing center licensing fund and may be appropriated to the department only to administer and enforce this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.009. ADOPTION OF RULES. (a) The board shall adopt rules necessary to implement this chapter.

(b) The board shall adopt rules that establish different levels of licenses to operate a birthing center and that provide requirements for the issuance, renewal, denial, suspension, and revocation of each level of license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.010. MINIMUM STANDARDS. (a) For each level of license of a birthing center, the rules must contain minimum standards for:

(1) the qualifications for professional and nonprofessional personnel;

(2) the supervision of professional and nonprofessional personnel;

(3) the provision and coordination of treatment and services;

(4) the organizational structure, including the lines of authority and the delegation of responsibility;

(5) the keeping of clinical records; and

(6) any other aspect of the operation of a birthing center that the board considers necessary to protect the public.

(b) This section does not authorize the board to:

(1) establish the qualifications of a licensed practitioner; or

(2) permit a person to provide health care services who is not authorized to provide those services under another state law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.0105. COMPLAINTS. A person may file a complaint with the department against a birthing center licensed under this chapter. A person who files a false complaint may be prosecuted under the Penal Code.

Added by Acts 1999, 76th Leg., ch. 1265, Sec. 3, eff. Sept. 1, 1999.

Sec. 244.011. DENIAL, SUSPENSION, PROBATION, OR REVOCATION OF LICENSE. (a) The department may deny, suspend, or revoke a license for:

(1) a violation of this chapter or a rule adopted under this chapter; or

(2) a history of continuing noncompliance with this chapter or the rules adopted under this chapter.

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

(c) If the department finds that a birthing center is in repeated noncompliance under Subsection (a) but that the noncompliance does not endanger public health and safety, the department may schedule the center for probation rather than suspending or revoking the center's license. The department shall provide notice to the center of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. The department shall designate a period of not less than 30 days during which the center will remain under probation. During the probation period, the center must correct the items that were in noncompliance and report the corrections to the department for approval.

(d) The department may suspend or revoke the license of a birthing center that does not correct items that were in noncompliance or that does not comply with the applicable requirements within the applicable probation period.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1265, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 802, Sec. 5, 6, eff. June 20, 2003.

Sec. 244.0115. EMERGENCY SUSPENSION. The department may issue an emergency order to suspend a license issued under this chapter if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the

public health and safety. On written request of the license holder, the department shall conduct a hearing not earlier than the seventh day or later than the 10th day after the date the notice of the emergency suspension is sent to the license holder to determine if the emergency suspension is to take effect, to be modified, or to be rescinded. The hearing and any appeal are governed by the department's rules for a contested case hearing and Chapter 2001, Government Code.

Added by Acts 1999, 76th Leg., ch. 1265, Sec. 3, eff. Sept. 1, 1999.

Sec. 244.012. INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements provided under this chapter if the department finds that the violation creates an immediate threat to the health and safety of the patients of a birthing center.

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

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

(2) restrain or prevent the establishment or operation of a birthing center without a license issued under this chapter; or

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

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

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.013. CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 244.003(a).

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

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.014. CIVIL PENALTY. (a) A person who violates this chapter or who fails to comply with a rule adopted under this chapter is liable for a civil penalty of not less than \$100 or more than \$500 for each violation if the department determines the violation threatens the health and safety of a patient.

(b) Each day of a continuing violation constitutes a separate ground for recovery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.015. IMPOSITION OF ADMINISTRATIVE PENALTY.

(a) The department may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter. A penalty collected under this section or Section 244.016 shall be deposited in the state treasury in the general revenue fund.

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

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

(d) The amount shall be based on:

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

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

(3) the history of previous violations;

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

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

(6) any other matter that justice may require.

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

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

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

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

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

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

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

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

(h) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the commissioner of public health by order shall approve the determination and impose the recommended penalty.

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

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

(k) Based on the findings of fact, conclusions of law, and proposal for a decision, the commissioner of public health by order may:

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

(2) find that a violation did not occur.

(1) The notice of the commissioner's order under Subsection

(k) that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 4.01, eff. Sept. 1, 1999.

Sec. 244.016. PAYMENT AND COLLECTION OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW. (a) Within 30 days after the date an order of the commissioner of public health under Section 244.015(k) that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

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

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

(1) stay enforcement of the penalty by:

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

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

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

(ii) is effective until all judicial review of the commissioner'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 penalty and is financially unable to give the supersedeas bond; and

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

(c) If the commissioner of public health receives a copy of an affidavit under Subsection (b)(2), the commissioner 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 penalty or to give a supersedeas bond.

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

(e) If the court sustains the finding that a violation occurred, 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.

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

(g) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final. The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

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

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 4.01, eff. Sept. 1, 1999.