

## **BILL ANALYSIS**

S.B. 267  
By: Schwertner  
Public Health  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Interested parties note troubling accounts of hospital owners fraudulently charging the Medicare program, which can lead to the closure of hospitals and limit access to life-saving care. S.B. 267 seeks to equip the state with the tools needed to keep a hospital operational if similar circumstances arise.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTIONS 2 and 3 of this bill.

### **ANALYSIS**

S.B. 267 amends the Health and Safety Code to lower from 25 percent to 5 percent the threshold amount of an individual's ownership interest in a corporation applying for a hospital license under the Texas Hospital Licensing Law above which the license application must include the individual's name and social security number. The bill requires the Department of State Health Services (DSHS) to conduct a criminal history background check on each applicant for a hospital license, except for a governmental unit, and, if the applicant is a partnership or corporation, each individual named in the license application. The bill requires the executive commissioner of the Health and Human Services Commission (HHSC) by rule to determine the manner by which an applicant or individual is required to submit information for purposes of a criminal history background check under the bill's provisions and establish criteria for determining whether an applicant is eligible for a hospital license based on such a criminal history background check. The bill authorizes DSHS to enter into an agreement with the Department of Public Safety to conduct the required criminal history background check.

S.B. 267 authorizes DSHS in accordance with DSHS rules to share with the office of inspector general of HHSC information relating to an applicant for a hospital license or a hospital license holder. The bill requires any information shared by DSHS with the office that is confidential under statutory provisions relating to hospital inspections to remain confidential and exempts such information from disclosure under state public information law. The bill requires the executive commissioner to adopt the rules necessary for such information sharing.

S.B. 267 requires DSHS to adopt a schedule for the inspection of each hospital licensed under the Texas Hospital Licensing Law so that 10 percent of the hospitals, or as near as possible to 10 percent, are scheduled to be inspected each year. The bill requires DSHS, in scheduling a hospital for such an inspection, to consider an accreditation, validation, or other full survey and

to prioritize the inspection of hospitals in accordance with risk factors DSHS considers important. The bill requires DSHS to inspect a licensed hospital at least once every three years if the hospital is not accredited by an accreditation body that is approved by the Centers for Medicare and Medicaid Services or does not meet the conditions of participation for certification under certain provisions of the federal Social Security Act. The bill authorizes DSHS to request a copy of a hospital's latest accreditation survey at any time and requires the hospital to comply with that request.

S.B. 267 authorizes DSHS to issue an emergency order to suspend a hospital license if DSHS has reasonable cause to believe that the conduct of a license holder creates an immediate danger to public health and safety and makes an emergency suspension effective immediately without a hearing on notice to the license holder. The bill requires DSHS, before issuing such an emergency order, to provide the license holder the opportunity to respond to DSHS findings. The bill requires DSHS, after the issuance of such an emergency order and on written request of the license holder to DSHS for a hearing, to refer the matter to the State Office of Administrative Hearings and requires an administrative law judge of the office to conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received by DSHS to determine if the emergency suspension is to be continued, modified, or rescinded. The bill establishes that the hearing and any appeal are governed by DSHS rules for a contested case hearing and the Administrative Procedure Act.

S.B. 267 includes among the factors required to be considered by DSHS in determining the amount of an administrative penalty to assess against a hospital for a violation under the Texas Hospital Licensing Law the effect of the penalty on the hospital's ability to continue to provide services. The bill raises the cap on such an administrative penalty from \$1,000 for each violation to \$25,000 for each violation but caps the penalty at \$10,000 for each violation if the hospital is a rural hospital with 75 beds or fewer. The bill defines "rural hospital" for purposes of assessing the penalty.

S.B. 267 authorizes DSHS to request the attorney general to bring an action in the name and on behalf of the state for the appointment of a trustee to operate a hospital if the hospital is operating without a license, DSHS has suspended or revoked the hospital's license, license suspension or revocation procedures against the hospital are pending and DSHS determines that an immediate danger to public health and safety exists, DSHS determines that an emergency exists that presents an immediate danger to public health and safety, or the hospital is closing and arrangements for relocation of the patients to other licensed institutions have not been made before closure. The bill limits the authority of a trustee appointed for a hospital that is closing and does not have arrangements for patient relocation to ensuring an orderly and safe relocation of the hospital's patients as quickly as possible. The bill requires a court to appoint a trustee to take charge of a hospital if after a hearing the court finds that involuntary appointment of a trustee is necessary and to appoint as trustee an individual whose background includes institutional medical administration. Venue for such an action is in Travis County. The bill prohibits a court having jurisdiction of a judicial review of the matter from ordering arbitration, whether on the motion of any party or on the court's own motion, to resolve the legal issues of a dispute involving the appointment of a trustee or conduct with respect to which the appointment of a trustee is sought. The bill sets out provisions relating to the qualifications for appointment as a trustee, compensation of trustees, and the periodic reports a trustee is required to provide to DSHS and the governing body of the applicable hospital. The bill exempts a hospital owned, operated, or leased by a governmental entity from the bill's provisions relating to the appointment of a trustee for a hospital.

S.B. 267 establishes the hospital perpetual care account as a dedicated account in the general revenue fund that consists of fees deposited to the credit of the account under the bill's provisions and money transferred or appropriated to the account by the legislature. The bill requires the executive commissioner to administer the account and limits the use of money in the account to paying for DSHS costs associated with the storage of medical records by DSHS and

any court-ordered appointment of a trustee to operate a hospital as provided by the bill. The bill authorizes the executive commissioner to impose and DSHS to collect a fee from each hospital in an amount necessary to maintain a balance of \$5 million in the account at all times. The bill requires the fee to be deposited to the credit of the account and requires DSHS to suspend collection of the fee for the duration of a period during which the balance of the account is \$5 million or more. The bill requires the commissioner of insurance, on January 1, 2018, to transfer \$5 million from the healthy Texas small employer premium stabilization fund to the hospital perpetual care account. The bill requires the executive commissioner of HHSC to adopt the rules required by the Texas Hospital Licensing Law, as amended by the bill, not later than May 1, 2018.

**EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.