

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1249
By: Nelson
Health Services
3/31/1999
Committee Report (Substituted)

DIGEST

Currently, Texas law does not provide for routine licensing inspections of ambulatory surgical centers (center). These centers have not received licensing surveys on a routine basis by the Texas Department of Health (TDH) since 1993, when Medicare funding was reduced. C.S.S.B. 1249 would authorize TDH to conduct on-site inspections every three years, and would allow TDH to issue emergency suspensions and assess administrative penalties.

PURPOSE

As proposed, C.S.S.B. 1249 authorizes the Texas Department of Health to inspect ambulatory surgical centers every three years and to issue administrative penalties.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 243.006(b), Health and Safety Code, to provide that an ambulatory surgical center (center) licensed by the Texas Department of Health (TDH) and certified under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) is subject to an on-site licensing inspection under this chapter once every three years while the center maintains the certification. Makes conforming changes.

SECTION 2. Amends Chapter 243, Health and Safety Code, by adding Sections 243.0115, 243.015, 243.016, 243.017, 243.018, 243.019, and 243.020, as follows:

Sec. 243.0115. EMERGENCY SUSPENSION. Authorizes TDH to issue an emergency order to suspend a license issued under this chapter, if TDH has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety. Provides that an emergency suspension is effective immediately without a hearing on notice to the license holder. Requires TDH to conduct a hearing no earlier than the 10th day or later than the 30th day after the date the hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded. Provides that the hearing and any appeal are governed by TDH rules for a contested case hearing and Chapter 2001, Government Code.

Sec. 243.015. ADMINISTRATIVE PENALTY. Authorizes TDH to assess an administrative penalty against a person who violates this chapter or a rule adopted under this chapter. Prohibits the penalty from exceeding \$1,000 for each violation. Requires TDH to consider certain conditions, in determining the amount of an administrative penalty assessed under this section. Provides that all proceedings for the assessment of an administrative penalty under this chapter are considered to be contested cases under Chapter 2001, Government Code.

Sec. 243.016. NOTICE; REQUEST FOR HEARING. Requires TDH to give written notice of the violation to the person alleged to have committed the violation, if, after investigation of a possible violation and the facts surrounding that possible violation, TDH determines that a violation has occurred. Requires the notice to include certain provisions. Authorizes the person notified to accept the determination of TDH made under this section, no later than the 20th day after the date on which the notice is received. Requires the commissioner of human services (commissioner) or the commissioner's designee to issue an order approving the determination and ordering that the person pay the proposed penalty, if the person notified of the violation accepts

the determination of TDH.

Sec. 243.017. HEARING; ORDER. Requires TDH to set a hearing, give written notice of the hearing to the person, and designate a hearings examiner to conduct the hearing, if the person notified fails to respond in a timely manner to the notice under Section 243.016(b) or if the person requests a hearing. Requires the hearings examiner to make findings of fact and conclusions of law and to promptly issue to the commissioner or the commissioner's designee a proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty, if a penalty is determined to be warranted. Authorizes the commissioner or the commissioner's designee by order to find that a violation has occurred and to assess a penalty, or to find that no violation has occurred, based on the findings of fact and conclusions of law and the recommendations of the hearings examiner.

Sec. 243.018. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW; REFUND. Requires TDH to give notice of the order under Section 243.017(c) to the person notified. Requires the notice to include certain information. Sets forth penalty provisions. Sets forth actions that a person who acts under Subsection (b)(3) may take within the 30-day period. Authorizes TDH to file with the court, within five days after the date the copy is received, a contest to the affidavit, if TDH receives a copy of an affidavit under Subsection (c)(2). Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and to stay the enforcement of the penalty on finding that the alleged facts are true. Provides that the person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and is financially unable to give a supersedeas bond. Authorizes TDH to refer the matter to the attorney general for collection of the penalty, if the person does not pay the penalty and the enforcement of the penalty is not stayed. Provides that judicial review of the order is instituted by filing a petition as provided by Chapter 2001G, Government Code, and is under the substantial evidence rule. Authorizes the court to uphold and reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty, if the court sustains the occurrence of the violation. Requires the court to order that no penalty is owed, if the court does not sustain the occurrence of the violation. Requires the court to proceed under this subsection, when the judgment of the court becomes final. Requires the court to order that TDH pay the appropriate amount plus accrued interest to the person, if the person paid the amount of the penalty under Subsection (b)(2), and if that amount is reduced or is not upheld by the court. Requires the interest to be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted, if the rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. Requires the court to order the release of the escrow account or bond, if the person paid the penalty under Subsection (c)(1)(A), or gave a supersedeas bond and if the amount of the penalty is not upheld by the court. Requires the court to order that the amount of the penalty be paid to TDH from the escrow account and that the remainder of the account be released, if the person paid the penalty under Subsection (c)(1)(A) and the amount of the penalty is reduced. Requires the court to order the release of the bond after the person pays the amount, if the person gave a supersedeas bond and if the amount of the penalty is reduced.

Sec. 243.019. PENALTY DEPOSITED TO STATE TREASURY. Requires a civil or administrative penalty collected under this chapter to be deposited in the state treasury to the credit of the general revenue fund.

Sec. 243.020. RECOVERY OF COSTS. Authorizes TDH to assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the hearing, the person's license is denied, suspended, or revoked or if administrative penalties are assessed against the person. Requires the person to pay expenses and costs assessed under this subsection no later than the 30th day after the date the order of the commissioner or the commissioner's designee requiring the payment of expenses and costs is final. Authorizes TDH to refer the matter to the attorney general for collection of the expenses and costs. Authorizes the attorney general to recover, on behalf of the attorney general and TDH, reasonable expenses and costs, if the attorney general brings an action against a person under Section 243.012 or 243.014 or to enforce an administrative penalty assessed under Section 243.015, and an injunction is granted against the person or the person is found liable for a civil or administrative penalty. Defines "reasonable expenses and costs." Requires the costs and expenses collected under this section to be deposited in the general revenue fund to the credit of the ambulatory surgical center penalty account. Authorizes money in the account to be appropriated only to TDH to administer this chapter. Provides that Section 403.095,

Government Code, does not apply to the account.

SECTION 3. Effective date: September 1, 1999.
Makes application of this Act prospective.

SECTION 4. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 2.

Amends Section 243.015(b), Health and Safety Code, to delete text providing that each day of a continuing violation constitutes a separate violation.