

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 1115  
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Health & Human Services  
4/27/2007  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Unlike traditional emergency rooms (ERs), freestanding ERs are not connected to any sort of hospital or medical clinic. Freestanding ERs have, in theory, all of the staffing and equipment necessary to handle emergency medical care. Optimally, these facilities have the advantages of location and speed. Because they are currently unregulated, they vary greatly in reliability and quality.

C.S.S.B. 1115 requires anyone seeking to operate a freestanding ER to acquire a license for each individual location. The State of Texas will approve or deny the application on the basis of structural stability, administration, staffing, equipment, and various levels of care. Following approval, the state will have the right to inspect the facility and revoke any license in the event of a care shortfall or apparently imminent danger to the community. Fines can accompany such a revocation. Any facility connected to a pre-established, licensed facility, does not have to apply for this license.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Sections 254.010 and 254.011, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subtitle B, Title 4, Health and Safety Code, by adding Chapter 254, as follows:

#### CHAPTER 254. INDEPENDENT EMERGENCY MEDICAL CARE FACILITIES

Sec. 254.001. DEFINITIONS. Defines "department," "executive commissioner," "facility," and "independent emergency medical care facility."

Sec. 254.002. LICENSE REQUIRED. (a) Prohibits a person, except as provided by Section 254.003, from establishing or operating an independent emergency medical care facility in this state without a license issued under this chapter.

(b) Requires each facility to have a separate license.

(c) Provides that a license issued under this chapter is not transferable or assignable.

Sec. 254.003. EXEMPTIONS FROM LICENSING REQUIREMENT. Provides that certain facilities are not required to be licensed under this chapter.

Sec. 254.004. LICENSE APPLICATION AND ISSUANCE. (a) Requires an applicant for a license under this chapter to submit an application to the Department of State Health Services (DSHS) on a form prescribed by DSHS.

(b) Requires each application to be accompanied by a nonrefundable license fee in an amount of not less than \$500 and not more than \$1,000 as set by the

executive commissioner of the Health and Human Services Commission (executive commissioner).

(c) Requires the application to contain evidence that the composition of the facility's staff meets standards adopted by the executive commissioner under this chapter.

(d) Requires DSHS to issue a license if, after inspection and investigation, it finds that the applicant and the facility meet the requirements of this chapter and the standards adopted under this chapter.

(e) Requires the license fee to be paid annually on renewal of the license.

Sec. 254.005. FACILITY REQUIREMENTS. Requires a facility to meet certain standards and provide certain services to be licensed under this chapter. Sets forth those standards and services.

Sec. 254.006. INSPECTIONS. Authorizes DSHS to inspect a facility at reasonable times as necessary to ensure compliance with this chapter.

Sec. 254.007. MONITORING. Authorizes DSHS to appoint a monitor for the facility to ensure compliance with this chapter if the facility's failure to comply creates a serious threat to the health and safety of the public. Requires the facility to pay the cost of the monitor.

Sec. 254.008. FEES. Requires the executive commissioner to set fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter.

Sec. 254.009. INDEPENDENT EMERGENCY MEDICAL CARE FACILITY LICENSING FUND. Requires all fees collected under this chapter to be deposited in the state treasury to the credit of the independent emergency medical care facility licensing fund and authorizes the fees to be appropriated to DSHS only to administer and enforce this chapter.

Sec. 254.010. ADOPTION OF RULES. Requires the executive commissioner to adopt rules necessary to implement this chapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate facility.

Sec. 254.011. MINIMUM STANDARDS. (a) Sets forth certain minimum standards applicable to a facility and other provisions that rules adopted under this chapter are required to contain.

(b) Provides that this section does not authorize the executive commissioner to establish the qualifications of a physician or other licensed health care practitioner or permit a person to provide health care services who is not authorized to provide those services under another state law.

Sec. 254.012. COMPLAINTS. Authorizes a person to file a complaint with DSHS against a facility licensed under this chapter.

Sec. 254.013. DENIAL, SUSPENSION, PROBATION, OR REVOCATION OF LICENSE. (a) Authorizes DSHS to deny, suspend, or revoke a license for a violation of this chapter or a rule adopted under this chapter or a history of continuing noncompliance with this chapter or rules adopted under this chapter.

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

(c) Authorizes DSHS, if it finds that a facility is in repeated noncompliance with this chapter or rules adopted under this chapter but that the noncompliance does not endanger public health and safety, to schedule the facility for probation rather than suspending or revoking the facility's license. Requires DSHS to provide notice to the facility of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. Requires DSHS to designate a period of not less than 30 days during which the facility remains under probation. Requires the facility, during the probation period, to correct the items that were in noncompliance and report the corrections to DSHS for approval.

(d) Authorizes DSHS to suspend or revoke the license of a facility that does not correct items that were in noncompliance or that does not comply with this chapter or the rules adopted under this chapter within the applicable probation period.

Sec. 254.014. EMERGENCY SUSPENSION. (a) Authorizes DSHS to issue an emergency order to suspend a license issued under this chapter if DSHS has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety.

(b) Provides that an emergency suspension under this section is effective on the later of the date stated in the suspension order or the 10th day after the date notice of the suspension is sent to the license holder.

(c) Requires DSHS, on written request of the license holder, to conduct a hearing not earlier than the seventh day or later than the 10th day after the date the notice of emergency suspension is sent to the license holder to determine if the suspension is to take effect or be modified or rescinded.

(d) Provides that a hearing and any appeal under this section are governed by DSHS's rules for a contested case hearing and Chapter 2001 (Administrative Procedure), Government Code.

Sec. 254.015. INJUNCTION. (a) Authorizes DSHS to 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 DSHS finds that the violation creates an immediate threat to the health and safety of the patients of a facility.

(b) Authorizes a district court, on petition of DSHS and on finding by the court that a person is violating the standards or licensing requirements provided under this chapter, to take certain actions by injunction.

(c) Requires the attorney general to institute and conduct a suit authorized by this section at the request of DSHS.

(d) Provides that venue for a suit brought under this section is in the county in which the facility is located or in Travis County.

Sec. 254.016. CRIMINAL PENALTY. (a) Provides that a person commits an offense if the person violates Section 254.002(a).

(b) Provides that an offense under this section is a misdemeanor punishable by a fine of not more than \$100 for the first offense and not more than \$200 for each subsequent offense.

(c) Provides that each day of a continuing violation constitutes a separate offense.

Sec. 254.017. CIVIL PENALTY. (a) Provides that a person who violates this chapter or a rule adopted under this chapter is liable for a civil penalty if DSHS determines that the violation threatens the health and safety of a patient. Provides that a penalty under this section is in an amount not less than \$100 and not more than \$500 for each violation.

(b) Provides that each day a violation continues constitutes a separate violation for the purposes of this section.

(c) Authorizes the attorney general to bring suit to recover a civil penalty under this section.

Sec. 254.018 IMPOSITION OF ADMINISTRATIVE PENALTY. (a) Authorizes DSHS to impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter. Requires a penalty collected under this section or Section 254.015 to be deposited in the state treasury in the general revenue fund.

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

(c) Prohibits the amount of the penalty from exceeding \$1,000 for each violation, and provides that each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. Prohibits the total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection from exceeding \$5,000.

(d) Requires the amount to be based on certain criteria.

(e) Requires DSHS, if it initially determines that a violation occurred, to give written notice of the report by certified mail to the person.

(f) Requires the notice under Subsection (e) to satisfy certain conditions.

(g) Authorizes a person to take certain action in writing within 20 days after the date the person receives the notice under Subsection (e).

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

(i) Requires the commissioner, if the person requests a hearing, to refer the matter to the State Office of Administrative Hearings (SOAH), which is required to promptly set a hearing date and give written notice of the time and place of the hearing to the person. Requires an administrative law judge of SOAH to conduct the hearing.

(j) Requires the administrative law judge to 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 a proposed penalty.

(k) Authorizes the commissioner to take certain actions by order based on the findings of fact, conclusions of law, and proposal for a decision.

(l) Requires the notice of the order under Subsection (k) that is sent to the person in accordance with Chapter 2001 (Administrative Procedures), Government Code, to include a statement of the right of the person to judicial review of the order.

Sec. 254.019 PAYMENT AND COLLECTION OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW. (a) Requires a person, within 30 days after the date an order of the commissioner under Section 254.014(k) that imposes an administrative penalty becomes final, to take certain action.

(b) Authorizes a person who files a petition for judicial review, within the 30-day period described by Subsection (a), to take certain actions.

(c) Authorizes the commissioner, if the commissioner receives a copy of an affidavit under Subsection (b)(2), to file with the court, within five days after the date the copy is received, a contest to the affidavit. 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 or to give a supersedeas bond.

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

(e) Authorizes the court, if the court sustains the finding that a violation occurred, to uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(f) Requires the court, if it does not sustain the finding that a violation occurred, to order that a penalty is not owed.

(g) Requires a court, if the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, to 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. Provides that the interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. Requires the interest to be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

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

SECTION 2. Amends Section 1301.001, Insurance Code, by adding Subdivision (3-a) to define "independent emergency medical care facility."

SECTION 3. Amends Section 1301.155, Insurance Code, as follows:

Sec. 1301.155. EMERGENCY CARE. (a) Redefines "emergency care."

(b) Requires an insurer to provide reimbursement for services originating in an independent emergency medical care facility if an insured person cannot reasonably reach a preferred provider.

SECTION 4. (a) Requires an independent emergency medical care facility, not later than September 1, 2008, to obtain a license as required by Chapter 254, Health and Safety Code, as added by this Act.

(b) Requires the executive commissioner of the Health and Human Services Commission, not later than March 1, 2008, to adopt rules as required by Chapter 254, Health and Safety Code, as added by this Act.

SECTION 5. Makes application of Section 1301.155, Insurance Code, as amended by this Act, prospective to September 1, 2008.

SECTION 6. Effective date: September 1, 2007. Effective date, Sections 254.013 through 254.019, Health and Safety Code, as added by this Act: September 1, 2008.