

1-1 By: Schwertner, Nelson S.B. No. 424
 1-2 (In the Senate - Filed February 2, 2015; February 4, 2015,
 1-3 read first time and referred to Committee on Health and Human
 1-4 Services; March 2, 2015, reported adversely, with favorable
 1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
 1-6 March 2, 2015, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 424 By: Taylor of Collin

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the licensing and regulation of hospitals in this
 1-22 state; increasing the amount of administrative penalties assessed
 1-23 or imposed against certain hospitals; authorizing the imposition of
 1-24 a fee.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. Section 241.022(b), Health and Safety Code, is
 1-27 amended to read as follows:

1-28 (b) The application must contain:

1-29 (1) the name and social security number of the sole
 1-30 proprietor, if the applicant is a sole proprietor;

1-31 (2) the name and social security number of each
 1-32 general partner who is an individual, if the applicant is a
 1-33 partnership;

1-34 (3) the name and social security number of any
 1-35 individual who has an ownership interest of more than five [25]
 1-36 percent in the corporation, if the applicant is a corporation; and

1-37 (4) any other information that the department may
 1-38 reasonably require.

1-39 SECTION 2. Subchapter B, Chapter 241, Health and Safety
 1-40 Code, is amended by adding Section 241.0261 to read as follows:

1-41 Sec. 241.0261. INFORMATION SHARING WITH OFFICE OF INSPECTOR
 1-42 GENERAL. (a) The department in accordance with department rules
 1-43 may share with the office of inspector general of the Health and
 1-44 Human Services Commission information relating to an applicant for
 1-45 a hospital license under this chapter or a hospital license holder.

1-46 (b) Any information shared by the department under this
 1-47 section with the office of inspector general of the Health and Human
 1-48 Services Commission that is confidential under Section 241.051 must
 1-49 remain confidential and is not subject to disclosure under Chapter
 1-50 552, Government Code.

1-51 (c) The executive commissioner of the Health and Human
 1-52 Services Commission shall adopt the rules necessary to implement
 1-53 this section.

1-54 SECTION 3. Section 241.051, Health and Safety Code, is
 1-55 amended by amending Subsection (a) and adding Subsections (a-1),
 1-56 (a-2), and (a-3) to read as follows:

1-57 (a) The department shall conduct an [may make any]
 1-58 inspection of each hospital licensed under this chapter as provided
 1-59 by Subsections (a-1) and (a-2), and the department may make any
 1-60 inspection, survey, or investigation [that] it considers

2-1 necessary. A representative of the department may enter the
2-2 premises of a hospital at any reasonable time to make an inspection,
2-3 a survey, or an investigation to assure compliance with or prevent a
2-4 violation of this chapter, the rules adopted under this chapter, an
2-5 order or special order of the commissioner of health, a special
2-6 license provision, a court order granting injunctive relief, or
2-7 other enforcement procedures. The department shall maintain the
2-8 confidentiality of hospital records as applicable under state or
2-9 federal law.

2-10 (a-1) The department shall adopt a schedule for the
2-11 inspection of each hospital licensed under this chapter so that 10
2-12 percent of the hospitals, or as near as possible to 10 percent, are
2-13 scheduled to be inspected each year. In scheduling a hospital for
2-14 inspection under this subsection, the department must consider an
2-15 accreditation, validation, or other full survey and must prioritize
2-16 the inspection of hospitals in accordance with risk factors the
2-17 department considers important, including:

2-18 (1) the date on which a hospital was last inspected;

2-19 (2) the number of deficiencies noted during the
2-20 previous inspection of a hospital; and

2-21 (3) the number of complaints received regarding a
2-22 hospital.

2-23 (a-2) Notwithstanding Subsection (a-1), the department
2-24 shall inspect a hospital licensed under this chapter at least once
2-25 every three years if the hospital:

2-26 (1) is not accredited by an accreditation body that is
2-27 approved by the Centers for Medicare and Medicaid Services; or

2-28 (2) does not meet the conditions of participation for
2-29 certification under Title XVIII of the Social Security Act (42
2-30 U.S.C. Section 1395 et seq.).

2-31 (a-3) The department may request a copy of a hospital's
2-32 latest accreditation survey at any time. The hospital shall comply
2-33 with the department's request.

2-34 SECTION 4. Subchapter C, Chapter 241, Health and Safety
2-35 Code, is amended by adding Section 241.0532 to read as follows:

2-36 Sec. 241.0532. EMERGENCY SUSPENSION. (a) The department
2-37 may issue an emergency order to suspend a license issued under this
2-38 chapter if the department has reasonable cause to believe that the
2-39 conduct of a license holder creates an immediate danger to public
2-40 health and safety. An emergency suspension is effective
2-41 immediately without a hearing on notice to the license holder.

2-42 (b) Before issuing an emergency order to suspend a license
2-43 under Subsection (a), the department must provide the license
2-44 holder the opportunity to respond to the department's findings.

2-45 (c) After the issuance of an emergency order under this
2-46 section, on written request of the license holder to the department
2-47 for a hearing, the department shall refer the matter to the State
2-48 Office of Administrative Hearings. An administrative law judge of
2-49 the office shall conduct a hearing not earlier than the 10th day or
2-50 later than the 30th day after the date the hearing request is
2-51 received by the department to determine if the emergency suspension
2-52 is to be continued, modified, or rescinded.

2-53 (d) The hearing and any appeal are governed by the
2-54 department's rules for a contested case hearing and Chapter 2001,
2-55 Government Code.

2-56 SECTION 5. Section 241.059, Health and Safety Code, is
2-57 amended by amending Subsections (b) and (c) and adding Subsections
2-58 (c-1), (c-2), and (c-3) to read as follows:

2-59 (b) In determining the amount of the penalty, the
2-60 commissioner of health shall consider:

2-61 (1) the hospital's previous violations;

2-62 (2) the seriousness of the violation;

2-63 (3) any threat to the health, safety, or rights of the
2-64 hospital's patients;

2-65 (4) the demonstrated good faith of the hospital; ~~and~~

2-66 (5) the effect of the penalty on the hospital's ability
2-67 to continue to provide services; and

2-68 (6) such other matters as justice may require.

2-69 (c) A ~~The~~ penalty assessed under this section may not

3-1 exceed;

3-2 (1) \$10,000 [~~\$1,000~~] for each violation, if the

3-3 hospital is a rural hospital with 75 beds or fewer; or

3-4 (2) \$25,000 for each violation for all other

3-5 hospitals.

3-6 (c-1) Notwithstanding Subsection (c), [~~except that~~] the

3-7 penalty for a violation of Section 166.004 shall be \$500.

3-8 (c-2) Each day of a continuing violation, other than a

3-9 violation of Section 166.004, may be considered a separate

3-10 violation.

3-11 (c-3) In this section, "rural hospital" means a hospital

3-12 that:

3-13 (1) is designated as a critical access hospital under

3-14 and in compliance with 42 U.S.C. Section 1395i-4;

3-15 (2) is classified as a rural referral center under 42

3-16 U.S.C. Section 1395ww(d)(5)(C)(i);

3-17 (3) is a sole community hospital, as defined by 42

3-18 U.S.C. Section 1395ww(d)(5)(D)(iii); or

3-19 (4) is located in a county with a population of 60,000

3-20 or less.

3-21 SECTION 6. Chapter 241, Health and Safety Code, is amended

3-22 by adding Subchapters D and D-1 to read as follows:

3-23 SUBCHAPTER D. TRUSTEES FOR HOSPITALS

3-24 Sec. 241.081. INVOLUNTARY APPOINTMENT. (a) The

3-25 department may request the attorney general to bring an action in

3-26 the name and on behalf of the state for the appointment of a trustee

3-27 to operate a hospital if:

3-28 (1) the hospital is operating without a license;

3-29 (2) the department has suspended or revoked the

3-30 hospital's license;

3-31 (3) license suspension or revocation procedures

3-32 against the hospital are pending and the department determines that

3-33 an immediate danger to public health and safety exists;

3-34 (4) the department determines that an emergency exists

3-35 that presents an immediate danger to public health and safety; or

3-36 (5) the hospital is closing and arrangements for

3-37 relocation of the patients to other licensed institutions have not

3-38 been made before closure.

3-39 (b) A trustee appointed under Subsection (a)(5) may only

3-40 ensure an orderly and safe relocation of the hospital's patients as

3-41 quickly as possible.

3-42 (c) After a hearing, a court shall appoint a trustee to take

3-43 charge of a hospital if the court finds that involuntary

3-44 appointment of a trustee is necessary.

3-45 (d) The court shall appoint as trustee an individual whose

3-46 background includes institutional medical administration.

3-47 (e) Venue for an action brought under this section is in

3-48 Travis County.

3-49 (f) A court having jurisdiction of a judicial review of the

3-50 matter may not order arbitration, whether on the motion of any party

3-51 or on the court's own motion, to resolve the legal issues of a

3-52 dispute involving the:

3-53 (1) appointment of a trustee under this section; or

3-54 (2) conduct with respect to which the appointment of a

3-55 trustee is sought.

3-56 Sec. 241.082. QUALIFICATIONS OF TRUSTEES. (a) A court may

3-57 appoint a person to serve as a trustee under this subchapter only if

3-58 the proposed trustee can demonstrate to the court that the proposed

3-59 trustee will be:

3-60 (1) present at the hospital as required to perform the

3-61 duties of a trustee; and

3-62 (2) available on call to appropriate staff at the

3-63 hospital, the department, and the court as necessary during the

3-64 time the trustee is not present at the hospital.

3-65 (b) A trustee shall report to the court in the event that the

3-66 trustee is unable to satisfy the requirements of Subsection (a)(1)

3-67 or (2).

3-68 (c) On the motion of any party or on the court's own motion,

3-69 the court may replace a trustee who is unable to satisfy the

4-1 requirements of Subsection (a)(1) or (2).

4-2 (d) A trustee's charges must separately identify personal
 4-3 hours worked for which compensation is claimed. A trustee's claim
 4-4 for personal compensation may include only compensation for
 4-5 activities related to the trusteeship and performed in or on behalf
 4-6 of the hospital.

4-7 Sec. 241.083. COMPENSATION; RELEASE OF FUNDS. (a) A
 4-8 trustee appointed under this subchapter is entitled to reasonable
 4-9 compensation as determined by the court. On the motion of any
 4-10 party, the court shall review the reasonableness of the trustee's
 4-11 compensation. The court shall reduce the amount if the court
 4-12 determines that the compensation is not reasonable.

4-13 (b) The trustee may petition the court to order the release
 4-14 to the trustee of any payment owed the trustee for care and services
 4-15 provided to the patients if the payment has been withheld,
 4-16 including a payment withheld by the Health and Human Services
 4-17 Commission at the recommendation of the department.

4-18 (c) Withheld payments may include payments withheld by a
 4-19 governmental agency or other entity during the appointment of the
 4-20 trustee, such as payments:

4-21 (1) for Medicaid, Medicare, or insurance;

4-22 (2) by another third party; or

4-23 (3) for medical expenses borne by the patient.

4-24 Sec. 241.084. COMMUNICATIONS BY TRUSTEE. (a) Except as
 4-25 provided by Subsection (b), a trustee appointed under this
 4-26 subchapter shall provide periodic reports to the department and the
 4-27 governing body of the hospital regarding:

4-28 (1) the status of the hospital following the emergency
 4-29 order to suspend the hospital's license and during the period the
 4-30 hospital is operated by the trustee; and

4-31 (2) each activity performed by the trustee on behalf
 4-32 of the hospital.

4-33 (b) A trustee is not required to report to the governing
 4-34 body of the hospital any information that may limit or impair the
 4-35 authority or activities of the trustee.

4-36 Sec. 241.085. EXEMPTION. This subchapter does not apply to
 4-37 a hospital owned, operated, or leased by a governmental entity.

4-38 SUBCHAPTER D-1. HOSPITAL PERPETUAL CARE ACCOUNT; FEE

4-39 Sec. 241.091. HOSPITAL PERPETUAL CARE ACCOUNT. (a) The
 4-40 hospital perpetual care account is a dedicated account in the
 4-41 general revenue fund.

4-42 (b) The account consists of:

4-43 (1) fees deposited to the credit of the account under
 4-44 this subchapter; and

4-45 (2) money transferred or appropriated to the account
 4-46 by the legislature.

4-47 (c) The executive commissioner of the Health and Human
 4-48 Services Commission shall administer the account. Money in the
 4-49 account may be used only to pay for department costs associated
 4-50 with:

4-51 (1) the storage of medical records by the department;
 4-52 and

4-53 (2) any court-ordered appointment of a trustee to
 4-54 operate a hospital as provided under Section 241.081, including the
 4-55 payment of reasonable compensation to the trustee under Section
 4-56 241.083.

4-57 Sec. 241.092. HOSPITAL PERPETUAL CARE FEE. (a) The
 4-58 executive commissioner of the Health and Human Services Commission
 4-59 may impose and the department may collect a fee from each hospital
 4-60 in an amount necessary to maintain a balance of \$5 million in the
 4-61 hospital perpetual care account at all times.

4-62 (b) The fee imposed under this section shall be deposited to
 4-63 the credit of the hospital perpetual care account.

4-64 (c) The department shall suspend collection of the fee for
 4-65 the duration of a period during which the balance of the hospital
 4-66 perpetual care account is \$5 million or more.

4-67 SECTION 7. (a) The executive commissioner of the Health and
 4-68 Human Services Commission shall adopt the rules required by Chapter
 4-69 241, Health and Safety Code, as amended by this Act, not later than

5-1 May 1, 2016.

5-2 (b) The changes in law made by this Act apply only to an
5-3 application submitted under Section 241.022, Health and Safety
5-4 Code, as amended by this Act, or the assessment or imposition of an
5-5 administrative penalty under Section 241.059, Health and Safety
5-6 Code, as amended by this Act, for a violation that occurs on or
5-7 after the effective date of this Act. An application submitted
5-8 under Section 241.022 before the effective date of this Act or the
5-9 assessment or imposition of an administrative penalty under Section
5-10 241.059 for a violation that occurs before the effective date of
5-11 this Act is governed by the law in effect on the date the
5-12 application was submitted or the violation occurred, and that law
5-13 is continued in effect for that purpose.

5-14 (c) Notwithstanding Section 6(e)(2)(B), Chapter 615 (S.B.
5-15 1367), Acts of the 83rd Legislature, Regular Session, 2013, on
5-16 January 1, 2016, the commissioner of insurance shall transfer \$5
5-17 million from the fund established under Subchapter F, Chapter 1508,
5-18 Insurance Code, to the hospital perpetual care account established
5-19 under Section 241.091, Health and Safety Code, as added by this Act.

5-20 SECTION 8. This Act takes effect immediately if it receives
5-21 a vote of two-thirds of all the members elected to each house, as
5-22 provided by Section 39, Article III, Texas Constitution. If this
5-23 Act does not receive the vote necessary for immediate effect, this
5-24 Act takes effect September 1, 2015.

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