

SUBJECT: Hospital licensing, inspections, penalties, court-appointed trustees

COMMITTEE: Public Health — committee substitute recommended

VOTE: 8 ayes — Crownover, Naishtat, Blanco, Guerra, R. Miller, Sheffield, Zedler, Zerwas

0 nays

3 absent — Coleman, Collier, S. Davis

SENATE VOTE: On final passage, March 17 — 30-0

WITNESSES: For — (*Registered, but did not testify:* Charles Bailey, Texas Hospital Association)

Against — None

On — (*Registered, but did not testify:* Kathryn Perkins and Derek Jakovich, Texas Department of State Health Services)

BACKGROUND: Health and Safety Code, ch. 241 requires hospitals in Texas to be licensed by the Department of State Health Services (DSHS). Subch. B governs licensing, and subch. C covers enforcement.

DIGEST: CSSB 424 would revise the requirements for reporting corporate ownership on hospital license applications, allow certain information to be shared between the Department of State Health Services (DSHS) and the office of inspector general of the Health and Human Services Commission (HHSC), authorize DSHS to inspect Texas hospitals, authorize DSHS to issue an emergency order to suspend a hospital's license, increase administrative penalties that DSHS could assess hospitals, authorize DSHS to ask the attorney general to pursue a court-appointed trustee for certain hospitals, and establish a dedicated account to pay the costs associated with court-appointed trustees.

Corporate license information. CSSB 424 would require that corporations applying for a hospital license list the name and social security number of anyone with more than 5 percent ownership in the corporation, a reduction from the current requirement that anyone with ownership of more than 25 percent be listed.

Information sharing about license holders. CSSB 424 would allow DSHS to share information with the HHSC's office of inspector general about applicants for hospital licenses or license holders. Confidential information that was shared would remain confidential and not subject to disclosure under the Public Information Act.

Hospital inspections. DSHS would be required to adopt a schedule to inspect each hospital licensed under ch. 241 so that 10 percent of hospitals were scheduled for inspections annually. The schedule would have to prioritize the inspections according to risk factors, including the date of the last inspection, the number of deficiencies noted in the last inspection, and complaints about the hospital.

CSSB 424 would require DSHS to inspect certain hospitals at least every three years. This frequency of inspections would be required if the hospital was not accredited by a body approved by the federal Centers for Medicare and Medicaid Services (CMS) or did not meet the conditions of participation for certification under certain federal provisions relating to Medicare. DSHS could request a copy of a hospital's latest accreditation at any time, and hospitals would be required to comply.

Emergency suspension of hospital license. DSHS could issue an emergency order to suspend a hospital's license if the agency had reasonable cause to believe that a license holder created an immediate danger to public health and safety. Such an order would be effective immediately without a hearing.

Before issuing an emergency order, DSHS would have to provide the license holder an opportunity to respond to the department's findings. Afterwards, and upon request of the license holder, DSHS would be

required to refer the matter to the State Office of Administrative Hearings (SOAH), which would have to hold a hearing within 30 days after the request but no sooner than 10 days after. The hearing would be governed by rules for contested case hearings under the Administrative Procedure Act.

Administrative penalties. The bill would increase the maximum administrative penalty assessed under ch. 241 from \$1,000 to \$10,000 per violation for rural hospitals with 75 or fewer beds, and to \$25,000 per violation for all other hospitals. When determining the amount of an administrative penalty assessed under the chapter, DSHS would be required to consider the effect of a penalty on the hospital's ability to continue providing services.

Court-appointed trustees for hospitals. DSHS could ask the attorney general to bring an action for the appointment of a trustee to operate a hospital if:

- the hospital was operating without a license;
- DSHS had suspended or revoked the hospital's license;
- license suspension or revocation procedures against the hospital were pending and DSHS determined that an immediate danger to public health and safety existed;
- DSHS determined that an emergency existed that presented an immediate danger to public health and safety; or
- the hospital was closing and arrangements to relocate patients had not been made.

After a hearing, a court would be required to appoint a trustee to take charge of a hospital if the court found the appointment necessary. Courts with jurisdiction to review the appointment of a trustee could not order arbitration to resolve a dispute over the appointment of a trustee or conduct relating to the appointment of a trustee.

The bill would establish qualifications for individuals appointed as a hospital trustee and would allow courts to replace trustees who could not

meet the qualifications.

Trustees would be entitled to reasonable compensation as determined by the court only for activities related to the trusteeship and performed in or on behalf of the hospital. A trustee could petition a court for certain withheld payments owed for patient care and services.

Trustees would be required to report to DSHS and the hospital's governing body about the status of the hospital and activities performed on its behalf of the hospital. A trustee would not have to report to the hospital's governing body information that could limit or impair the trustee.

The bill's provisions relating to trustees would not apply to hospitals owned, operated, or leased by a governmental entity.

Perpetual care account and fee. CSSB 424 would create the hospital perpetual care account as a dedicated account in the general revenue fund. The commissioner of insurance would be required to transfer \$5 million from the healthy Texas small employer premium stabilization fund to the perpetual care account. The HHSC executive commissioner would administer the account. Money in the account could be used only to pay for DSHS costs to store medical records and expenses related to a trustee appointed by a court under CSSB 424.

DSHS could collect a fee from each hospital to maintain a balance of \$5 million in the account. If the account had a balance of \$5 million, collection of the fee would be suspended.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015. The bill would apply only to applications for licenses submitted on or after its effective date and to administrative penalties assessed for violations that occurred on or after the effective date.

SUPPORTERS
SAY:

CSSB 424 would give the state needed tools to deal with failing and troubled hospitals, which would protect the health and safety of Texans. With the tools in CSSB 424, DSHS could better identify and address potential problems at hospitals, allowing the state to take steps to ensure the ongoing operation of a hospital or a safe transition for patients if a hospital was closing.

The need for many of the provisions in CSSB 424 were illustrated a few years ago when an operator of several Texas hospitals in North and North East Texas was involved in Medicaid fraud and also reportedly ran hospitals with ongoing threats to patient safety. Three of the hospitals closed, which reduced access to health care for these communities.

CSSB 424 could be implemented by the state with existing resources and with no change to the current hospital licensing fee, according to the fiscal note.

Corporate license information. CSSB 424 would provide greater transparency and accountability of those with financial interests in a hospital by requiring an individual with a 5 percent ownership interest in a corporation to be identified on a hospital license. This would help make DSHS aware of poorly performing hospital operators.

Information sharing. Allowing information sharing between DSHS and the office of inspector general would aid in investigations and could help with a safe and orderly transition to a trustee if needed. CSSB 424 would ensure that any shared confidential information remained confidential.

Hospital inspections. CSSB 424 would fill a gap in the law that currently gives the state no statutory authority to regularly inspect hospitals. It is important that hospitals be regularly inspected and monitored by the state so that problems and trends can be identified and handled. DSHS would put resources where they were most needed by requiring inspections to be prioritized by risk factors. The needs of hospitals would be considered because DSHS would have to consider accreditation or other inspections.

Hospitals that are accredited by certain organizations approved by the Centers for Medicare and Medicaid Services (CMS) or deemed by CMS to meet certain criteria would be inspected every 10 years, because these facilities are routinely inspected as part of their accreditation process. About 73 percent of hospitals would fall into this category.

To ensure adequate oversight of all hospitals, the bill would institute more frequent inspections for hospitals that were not so accredited in this fashion. These hospitals may have no regulatory or accreditation presence, so more frequent inspections would be necessary to make sure they were meeting standards and providing quality care. The state inspections would not be burdensome to these hospitals because these inspections would not be part of an accreditation process.

Emergency suspension of hospital licenses. CSSB 424 would give DSHS the authority to order the emergency suspension of a hospital license so that the state could act quickly if necessary. The bill would limit the use of emergency suspension to those cases where there was an immediate danger to public health and safety.

CSSB 424 would create a fair process for license holders by requiring that they receive the chance to respond before an emergency order suspended a license. If requested by the license holder, the matter would then be transferred to SOAH, at which point the license holder could participate in a hearing on the matter.

Administrative penalties. The bill would increase the maximum administrative penalties so that DSHS would have the flexibility to assess appropriate penalties. The higher threshold in the bill would allow the state to hold hospitals accountable for serious violations while allowing more room for gradations in penalties for less serious violations. The current cap of \$1,000 could be a slap on the wrist in some situations.

The bill would treat small, rural hospitals fairly by establishing a lower cap on the maximum penalties they could be assessed. Using 75 beds as a threshold for the lower maximum penalties would strike the right balance

between these smaller facilities and larger ones that should be held to a different threshold.

DSHS would use discretion in setting the penalties and could use the maximum penalties for repeat and serious violations. The goal of CSSB 424 is to encourage compliance, not to burden hospitals with penalties or to put them out of business. The bill would make sure that hospitals and patients were considered when setting the penalties by requiring DSHS to consider the effect of a penalty on a hospital's ability to continue to provide service.

Court-appointed trustees for hospitals. To help protect patients and ensure quality care if a hospital was in licensing trouble or if an emergency existed, CSSB 424 would establish a process for a court to appoint a trustee to take over a hospital under certain circumstances. This would be similar to a process that could be used under some circumstances for nursing facilities.

The bill would establish reasonable criteria to ensure that trustees were appointed only when necessary, in cases involving immediate danger to public health and safety or licensing issues. The goal of a trustee would be to safely relocate patients or to secure a buyer that could take over operations. It would be appropriate for the state to have this process because of the public's interest in safe patient care and access to care.

Perpetual care account and fee. The perpetual care account would be created to cover costs that could be incurred if a court appointed a trustee for a hospital. These costs could include compensation for the trustee and the cost of medical record storage.

The initial money for the account would come from a transfer of existing and unused funds in the premium stabilization fund held by the Texas Department of Insurance. Money in the stabilization fund comes from penalties paid by health plans for failing to make certain payments on time. The original purpose for the fund no longer exists, but it still has a \$47 million balance. The perpetual care fund would be an appropriate use

of a small portion of the premium stabilization fund that was established to ensure access to care, also a goal of this bill.

The bill would give DSHS the ability to raise fees if needed to keep the fund at \$5 million, but the fee would be assessed only if needed.

OPPONENTS
SAY:

Some of the provisions in CSSB 424 could go too far in reacting to a scandal that took place a few years ago involving one hospital owner.

Hospital inspections. The inspection schedule established by CSSB 424 could be a burden on some facilities. Inspections can involve staff being shifted to deal with the inspection, and this could be difficult for some hospitals, especially smaller ones.

Administrative penalties. The increase in administrative penalties in CSSB 424 would be too high. Raising the maximum penalty from \$1,000 to \$10,000 for rural hospitals could result in penalties that were too punitive in some cases and that could have an impact on a hospital's ability to operate after a few days of penalties.

The 75-bed threshold that CSSB 424 would designate for determining which hospitals would be subject to the \$10,000 cap in daily penalties and which would be subject to the \$25,000 cap could result in some small rural hospitals just above the threshold being subject to an inappropriately high cap. Other options such as tiered penalties might result in more equitable treatment of different sized hospitals.

Court-appointed trustees for hospitals. The state should be cautious about setting up a process to take over private hospitals by appointing a trustee. It is unclear what criteria would be used for deciding when a trustee would be terminated or how the state would end such oversight.