

BILL ANALYSIS

Senate Research Center
76R10207 MCK-D

C.S.S.B. 1232
By: Nelson
Health Services
3/24/1999
Committee Report (Substituted)

DIGEST

Currently, the Texas Department of Health (department) regulates birthing centers, but does not have the authority to issue emergency suspensions, revoke a license, use administrative penalties as an enforcement tool, or place a monitor at the center's expense when compliance issues warrant such a move. Lack of authority may prohibit the department from intervening to protect the health and well-being of patients. C.S.S.B. 1232 would amend the Texas Birthing Center Act to expand the enforcement tools available to the department in the course of regulating birthing centers.

PURPOSE

As proposed, C.S.S.B. 1232 amends the Texas Birthing Center Act to expand the enforcement tools available to the Texas Department of Health in the course of regulating birthing centers.

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 244.006, Health and Safety Code, to authorize the Texas Department of Health (department) to appoint a monitor for the birthing center to ensure compliance with this chapter, if a birthing center's failure to comply with this chapter creates a serious threat to the health and safety of the public. Makes conforming changes.

SECTION 2. Amends Section 244.011(a), Health and Safety Code, to authorize the department to deny, suspend, or revoke a license for a history of noncompliance with this chapter or the rules adopted under this chapter. Makes conforming changes.

SECTION 3. Amends Chapter 244, Health and Safety Code, by adding Sections 244.0105, 244.0115, 244.015, 244.016, 244.017, 244.018, 244.019, and 244.020, as follows:

Sec. 244.0105. COMPLAINTS. Authorizes a person to file a complaint with the department against a birthing center licensed under this chapter. Provides that a person who files a false affidavit may be prosecuted under the Penal Code.

Sec. 244.0115. EMERGENCY SUSPENSION. Sets forth the actions the department may take regarding the issuance of an emergency order to suspend a license.

Sec. 244.015. ADMINISTRATIVE PENALTY. Authorizes the department to assess an administrative penalty against a person who violates this chapter or a rule adopted under this chapter. Prohibits a penalty from exceeding \$1,000 for each violation. Sets forth the department's required considerations 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. 244.016. NOTICE; REQUEST FOR HEARING. Requires the department to give written notice of a violation to the person alleged to have committed the violation, if after investigation of a possible violation and the facts surrounding that possible violation, the department determines that a violation has occurred. Sets forth the required information to be included in the notice.

Authorizes a notified person, not later than the 20th day after the date on which a notice is received, to accept the determination made by the department under this section, including the proposed penalty, or make a written request for a hearing on that determination. Requires the commissioner of health (commissioner) or the commissioner's designee to issue an order approving the determination and ordering that the person pay the proposed penalty, if a person notified of a violation accepts the department's determination.

Sec. 244.017. HEARING; ORDER. Sets forth the department's required actions if a notified person fails to respond in a timely manner to the notice under Section 244.016(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. Provides that based on the findings of fact, conclusions of law, and the recommendations of the hearings examiner, the commissioner or the commissioner's designee by order may find that a violation has occurred and may assess a penalty, or may find that no violation has occurred.

Sec. 244.018. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW; REFUND. Requires the department to give notice of the order under Section 244.017(c) to the person notified. Sets forth the required information to be included in the notice. Requires a person to take certain actions, not later than the 30th day after the date on which the decision is final as provided by Chapter 2001, Government Code. Sets forth the actions a person who acts under Subsection (b)(3) may take, within the 30-day period, regarding the stay of enforcement. Authorizes the department to file with the court, within five days after the date the copy is received, a contest to the affidavit, if the department 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 to give a supersedeas bond. Authorizes the department to refer the matter to the attorney general for collection of a penalty, if a person does not pay a 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 or reduce the amount of a penalty and order a person to pay the full or reduced amount of a penalty, if the court sustains the occurrence of the violation. Requires the court to proceed under this subsection when the judgment of the court becomes final. Authorizes the court to order that the department pay the appropriate amount plus accrued interest to a person, if a person paid the amount of the penalty under Subsection (b)(2) and if that amount is reduced or is not upheld by the court. Provides that the rate of interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. Requires interest to be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. Requires the court to release the escrow account or bond, if a 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 the department from the escrow account and that the remainder of the account be released, if a 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 a person pays the amount, if a person gave a supersedeas bond and if the amount of the penalty is reduced.

Sec. 244.019. 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. 244.020. RECOVERY OF COSTS. Authorizes the department 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 a person. Requires a person to pay expenses and costs assessed under this subsection not later than the 30th day after the date of the order of the commissioner or the commissioner's designee requiring the payment of expenses and costs to be final. Authorizes the department to refer the matter to the attorney general for collection of the expenses and costs. Authorizes the attorney general to recover reasonable expenses and costs, if the attorney general brings certain actions

against a person and an injunction is granted against the person. Defines “reasonable expenses and costs.” Requires cost and expenses collected to be deposited in the general revenue fund to the credit of the birthing center penalty account. Authorizes money in the account to be appropriated only to the department for administering this chapter. Provides that Section 403.095, Government Code, does not apply to the account.

SECTION 4. Effective date: September 1, 1999.

SECTION 5. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Amends Section 244.006, Health and Safety Code, to authorize the department to appoint a monitor for the birthing center to ensure compliance with this chapter, if a birthing center’s failure to comply with this chapter creates a serious threat to the health and safety of the public, rather than the center is not complying with this chapter.

SECTION 3.

Amends Section 244.0105, Health and Safety Code, to delete text regarding requiring a complaint to be accompanied by a sworn affidavit.

Amends Section 244.0115, Health and Safety Code, to make a nonsubstantive change.

Amends Section 244.015, Health and Safety Code to delete text providing that each day of a continuing violation constitutes a separate violation.