

BILL ANALYSIS

Senate Research Center
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S.B. 424
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Health & Human Services
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Last year, an owner of six rural hospitals in Texas was found guilty of fraudulently charging over \$1 million to the Medicare program. This fraudulent act, along with other acts of mismanagement and neglect, led to the closure of three of the hospitals. Such a closure has the potential to limit access to life-saving care for the citizens of rural Texas.

S.B. 424 would allow the Department of State Health Services (DSHS) to seek appointment of a trustee by the attorney general to operate a hospital in some extreme cases in which the closure of the hospital is likely. S.B. 424 would also allow DSHS to place an emergency suspension on a hospital license holder if the license holder's actions place the public health and safety in immediate jeopardy. Additionally, the bill requires increased hospital ownership disclosure, requires hospitals to have a surety bond to cover the costs of storing hospital records in the event of a closure, requires DSHS to inspect hospitals every three years, increases the maximum amount of penalties that may be assessed on hospitals for licensure violations, and allows DSHS and the office of the inspector general to share information regarding applicants for and current holders of a hospital license.

As proposed, S.B. 424 amends current law relating to the licensing and regulation of hospitals in this state and increases the amount of administrative penalties assessed or imposed against certain hospitals.

[**Note:** While the statutory reference in this bill is to the Texas Department of Health (TDH), the following amendments affect the Department of State Health Services, as the successor agency to TDH.]

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 3 (Section 241.0261, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 241.022(b) and (d), Health and Safety Code, as follows:

(b) Requires that the hospital license application contain the name and social security number of any individual who has an ownership interest of more than five, rather than 25, percent in the corporation, if the applicant is a corporation.

(d) Requires that the application be accompanied by a copy of the surety bond required under Section 241.0221. Makes nonsubstantive changes.

SECTION 2. Amends Subchapter B, Chapter 241, Health and Safety Code, by adding Section 241.0221, as follows:

Sec. 241.0221. SURETY BOND FOR LICENSE. (a) Requires an applicant for issuance of, or a license holder applying for renewal of, a license issued under this chapter to

provide the Texas Department of Health (TDH) with a surety bond in an amount sufficient to cover the costs associated with:

(1) the storage of medical records for 10 years if the hospital is closed; and

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

(b) Provides that this section does not apply to a hospital that is owned or directly operated by a governmental entity.

SECTION 3. Amends Subchapter B, Chapter 241, Health and Safety Code, by adding Section 241.0261, as follows:

Sec. 241.0261. INFORMATION SHARING WITH OFFICE OF INSPECTOR GENERAL. (a) Authorizes TDH in accordance with TDH rules to share with the office of inspector general of the Health and Human Services Commission (HHSC) information relating to an applicant for a hospital license under this chapter or a hospital license holder.

(b) Requires the executive commissioner of HHSC to adopt the rules necessary to implement this section.

SECTION 4. Amends Section 241.051(a), Health and Safety Code, to require TDH to conduct an inspection of each hospital licensed under this chapter at least once every three years, and authorizes TDH to make any inspection, survey, or investigation it considers necessary, rather than authorizes TDH to make any inspection, survey, or investigation it considers necessary. Makes a nonsubstantive change.

SECTION 5. Amends Subchapter C, Chapter 241, Health and Safety Code, by adding Section 241.0532, as follows:

Sec. 241.0532. EMERGENCY SUSPENSION. (a) 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.

(b) Requires TDH, on written request of the license holder to TDH for a hearing, to refer the matter to the State Office of Administrative Hearings (SOAH). Requires an administrative law judge of SOAH to conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received by TDH to determine if the emergency suspension is to be continued, modified, or rescinded.

(c) Provides that the hearing and any appeal are governed by TDH's rules for a contested case hearing and Chapter 2001 (Administrative Procedure), Government Code.

SECTION 6. Amends Sections 241.059(b) and (c), Health and Safety Code, as follows:

(b) Requires the commissioner of health, in determining the amount of the penalty, to consider the effect of the penalty on the hospital's ability to continue to provide services. Makes nonsubstantive changes.

(c) Prohibits the penalty from exceeding \$25,000, rather than \$1,000, for each violation, except that the penalty for a violation of Section 166.004 (Statement Relating to Advance Directive) is required to be \$500.

SECTION 7. Amends Chapter 241, Health and Safety Code, by adding Subchapter D, as follows:

SUBCHAPTER D. TRUSTEES FOR HOSPITALS

Sec. 241.081. INVOLUNTARY APPOINTMENT. (a) Authorizes TDH to request the attorney general to bring an action in the name and on behalf of the state for the appointment of a trustee to operate a hospital if:

- (1) the hospital is operating without a license;
- (2) TDH has suspended or revoked the hospital's license;
- (3) license suspension or revocation procedures against the hospital are pending and TDH determines that an imminent threat to the health and safety of the patients exists;
- (4) TDH determines that an emergency exists that presents an immediate threat to the health and safety of the patients; or
- (5) the hospital is closing and arrangements for relocation of the patients to other licensed institutions have not been made before closure.

(b) Provides that a trustee appointed under Subsection (a)(5) may only ensure an orderly and safe relocation of the hospital's patients as quickly as possible.

(c) Requires a court, after a hearing, to appoint a trustee to take charge of a hospital if the court finds that involuntary appointment of a trustee is necessary.

(d) Requires the court, if possible, to appoint as trustee an individual whose background includes institutional medical administration.

(e) Provides that venue for an action brought under this section is in Travis County.

(f) Prohibits a court having jurisdiction of a judicial review of the matter from ordering arbitration, whether on the motion of any party or on the court's own motion, to resolve the legal issues of a dispute involving the:

- (1) appointment of a trustee under this section; or
- (2) conduct with respect to which the appointment of a trustee is sought.

Sec. 241.082. QUALIFICATIONS OF TRUSTEES. (a) Authorizes a court to appoint a person to serve as a trustee under this subchapter only if the proposed trustee can demonstrate to the court that the proposed trustee will be:

- (1) present at the hospital as required to perform the duties of a trustee; and
- (2) available on call to appropriate staff at the hospital, TDH, and the court as necessary during the time the trustee is not present at the hospital.

(b) Requires a trustee to report to the court in the event that the trustee is unable to satisfy the requirements of Subsection (a)(1) or (2).

(c) Authorizes the court, on the motion of any party or on the court's own motion, to replace a trustee who is unable to satisfy the requirements of Subsection (a)(1) or (2).

(d) Requires a trustee's charges to separately identify personal hours worked for which compensation is claimed. Authorizes that trustee's claim for personal compensation to include only compensation for activities related to the trusteeship and performed in or on behalf of the hospital.

Sec. 241.083. COMPENSATION; RELEASE OF FUNDS. (a) Provides that a trustee appointed under this subchapter is entitled to reasonable compensation as determined by the court. Requires the court, on the motion of any party, to review the reasonableness of the trustee's compensation. Requires the court to reduce the amount if the court determines that the compensation is not reasonable.

(b) Authorizes the trustee to petition the court to order the release to the trustee of any payment owed the trustee for care and services provided to the patients if the payment has been withheld, including a payment withheld by HHSC at the recommendation of TDH.

(c) Provides that withheld payments may include payments withheld by a governmental agency or other entity during the appointment of the trustee, such as payments:

- (1) for Medicaid, Medicare, or insurance;
- (2) by another third party; or
- (3) for medical expenses borne by the patient.

SECTION 8. (a) Requires the executive commissioner of HHSC to adopt the rules required by Chapter 241 (Hospitals), Health and Safety Code, as amended by this Act, not later than May 1, 2016.

(b) Makes application of Sections 241.022 and 241.059, as amended by this Act, prospective.

SECTION 9. Effective date: upon passage or September 1, 2015.