

1-1 By: Schwertner S.B. No. 267
1-2 (In the Senate - Filed December 5, 2016; January 30, 2017,
1-3 read first time and referred to Committee on Health & Human
1-4 Services; March 13, 2017, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;
1-6 March 13, 2017, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	<u>Schwertner</u>	X		
1-10	<u>Uresti</u>	X		
1-11	<u>Buckingham</u>	X		
1-12	<u>Burton</u>	X		
1-13	<u>Kolkhorst</u>		X	
1-14	<u>Miles</u>	X		
1-15	<u>Perry</u>	X		
1-16	<u>Taylor of Collin</u>	X		
1-17	<u>Watson</u>	X		

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 267 By: Schwertner

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 commission
1-44 information relating to an applicant for a hospital license under
1-45 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 commission that
1-48 is confidential under Section [241.051](#) must remain confidential and
1-49 is not subject to disclosure under Chapter [552](#), Government Code.

1-50 (c) The executive commissioner shall adopt the rules
1-51 necessary to implement this section.

1-52 SECTION 3. Section [241.051](#), Health and Safety Code, is
1-53 amended by amending Subsection (a) and adding Subsections (a-1),
1-54 (a-2), and (a-3) to read as follows:

1-55 (a) The department shall conduct an ~~[may make any]~~
1-56 inspection of each hospital licensed under this chapter as provided
1-57 by Subsections (a-1) and (a-2), and the department may make any
1-58 inspection, survey, or investigation ~~[that]~~ it considers
1-59 necessary. A representative of the department may enter the
1-60 premises of a hospital at any reasonable time to make an inspection,

2-1 a survey, or an investigation to assure compliance with or prevent a
 2-2 violation of this chapter, the rules adopted under this chapter, an
 2-3 order or special order of the commissioner, a special license
 2-4 provision, a court order granting injunctive relief, or other
 2-5 enforcement procedures. The department shall maintain the
 2-6 confidentiality of hospital records as applicable under state or
 2-7 federal law.

2-8 (a-1) The department shall adopt a schedule for the
 2-9 inspection of each hospital licensed under this chapter so that 10
 2-10 percent of the hospitals, or as near as possible to 10 percent, are
 2-11 scheduled to be inspected each year. In scheduling a hospital for
 2-12 inspection under this subsection, the department must consider an
 2-13 accreditation, validation, or other full survey and must prioritize
 2-14 the inspection of hospitals in accordance with risk factors the
 2-15 department considers important, including:

2-16 (1) the date on which a hospital was last inspected;
 2-17 (2) the number of deficiencies noted during the
 2-18 previous inspection of a hospital; and
 2-19 (3) the number of complaints received regarding a
 2-20 hospital.

2-21 (a-2) Notwithstanding Subsection (a-1), the department
 2-22 shall inspect a hospital licensed under this chapter at least once
 2-23 every three years if the hospital:

2-24 (1) is not accredited by an accreditation body that is
 2-25 approved by the Centers for Medicare and Medicaid Services; or
 2-26 (2) does not meet the conditions of participation for
 2-27 certification under Title XVIII of the Social Security Act (42
 2-28 U.S.C. Section 1395 et seq.).

2-29 (a-3) The department may request a copy of a hospital's
 2-30 latest accreditation survey at any time. The hospital shall comply
 2-31 with the department's request.

2-32 SECTION 4. Subchapter C, Chapter 241, Health and Safety
 2-33 Code, is amended by adding Section 241.0532 to read as follows:

2-34 Sec. 241.0532. EMERGENCY SUSPENSION. (a) The department
 2-35 may issue an emergency order to suspend a license issued under this
 2-36 chapter if the department has reasonable cause to believe that the
 2-37 conduct of a license holder creates an immediate danger to public
 2-38 health and safety. An emergency suspension is effective
 2-39 immediately without a hearing on notice to the license holder.

2-40 (b) Before issuing an emergency order to suspend a license
 2-41 under Subsection (a), the department must provide the license
 2-42 holder the opportunity to respond to the department's findings.

2-43 (c) After the issuance of an emergency order under this
 2-44 section, on written request of the license holder to the department
 2-45 for a hearing, the department shall refer the matter to the State
 2-46 Office of Administrative Hearings. An administrative law judge of
 2-47 the office shall conduct a hearing not earlier than the 10th day or
 2-48 later than the 30th day after the date the hearing request is
 2-49 received by the department to determine if the emergency suspension
 2-50 is to be continued, modified, or rescinded.

2-51 (d) The hearing and any appeal are governed by the
 2-52 department's rules for a contested case hearing and Chapter 2001,
 2-53 Government Code.

2-54 SECTION 5. Section 241.059, Health and Safety Code, is
 2-55 amended by amending Subsections (b) and (c) and adding Subsections
 2-56 (c-1), (c-2), and (c-3) to read as follows:

2-57 (b) In determining the amount of the penalty, the department
 2-58 shall consider:

2-59 (1) the hospital's previous violations;
 2-60 (2) the seriousness of the violation;
 2-61 (3) any threat to the health, safety, or rights of the
 2-62 hospital's patients;
 2-63 (4) the demonstrated good faith of the hospital; ~~and~~
 2-64 (5) the effect of the penalty on the hospital's ability
 2-65 to continue to provide services; and

2-66 (6) such other matters as justice may require.

2-67 (c) A ~~The~~ penalty assessed under this section may not
 2-68 exceed:

2-69 (1) \$10,000 ~~[\$1,000]~~ for each violation, if the

3-1 hospital is a rural hospital with 75 beds or fewer; or
3-2 (2) \$25,000 for each violation for all other
3-3 hospitals.
3-4 (c-1) Notwithstanding Subsection (c), [except that] the
3-5 penalty for a violation of Section 166.004 shall be \$500.
3-6 (c-2) Each day of a continuing violation, other than a
3-7 violation of Section 166.004, may be considered a separate
3-8 violation.
3-9 (c-3) In this section, "rural hospital" means a hospital
3-10 that:
3-11 (1) is designated as a critical access hospital under
3-12 and in compliance with 42 U.S.C. Section 1395i-4;
3-13 (2) is classified as a rural referral center under 42
3-14 U.S.C. Section 1395ww(d)(5)(C)(i);
3-15 (3) is a sole community hospital, as defined by 42
3-16 U.S.C. Section 1395ww(d)(5)(D)(iii); or
3-17 (4) is located in a county with a population of 60,000
3-18 or less.
3-19 SECTION 6. Chapter 241, Health and Safety Code, is amended
3-20 by adding Subchapters D and D-1 to read as follows:
3-21 SUBCHAPTER D. TRUSTEES FOR HOSPITALS
3-22 Sec. 241.081. INVOLUNTARY APPOINTMENT. (a) The
3-23 department may request the attorney general to bring an action in
3-24 the name and on behalf of the state for the appointment of a trustee
3-25 to operate a hospital if:
3-26 (1) the hospital is operating without a license;
3-27 (2) the department has suspended or revoked the
3-28 hospital's license;
3-29 (3) license suspension or revocation procedures
3-30 against the hospital are pending and the department determines that
3-31 an immediate danger to public health and safety exists;
3-32 (4) the department determines that an emergency exists
3-33 that presents an immediate danger to public health and safety; or
3-34 (5) the hospital is closing and arrangements for
3-35 relocation of the patients to other licensed institutions have not
3-36 been made before closure.
3-37 (b) A trustee appointed under Subsection (a)(5) may only
3-38 ensure an orderly and safe relocation of the hospital's patients as
3-39 quickly as possible.
3-40 (c) After a hearing, a court shall appoint a trustee to take
3-41 charge of a hospital if the court finds that involuntary
3-42 appointment of a trustee is necessary.
3-43 (d) The court shall appoint as trustee an individual whose
3-44 background includes institutional medical administration.
3-45 (e) Venue for an action brought under this section is in
3-46 Travis County.
3-47 (f) A court having jurisdiction of a judicial review of the
3-48 matter may not order arbitration, whether on the motion of any party
3-49 or on the court's own motion, to resolve the legal issues of a
3-50 dispute involving the:
3-51 (1) appointment of a trustee under this section; or
3-52 (2) conduct with respect to which the appointment of a
3-53 trustee is sought.
3-54 Sec. 241.082. QUALIFICATIONS OF TRUSTEES. (a) A court may
3-55 appoint a person to serve as a trustee under this subchapter only if
3-56 the proposed trustee can demonstrate to the court that the proposed
3-57 trustee will be:
3-58 (1) present at the hospital as required to perform the
3-59 duties of a trustee; and
3-60 (2) available on call to appropriate staff at the
3-61 hospital, the department, and the court as necessary during the
3-62 time the trustee is not present at the hospital.
3-63 (b) A trustee shall report to the court in the event that the
3-64 trustee is unable to satisfy the requirements of Subsection (a)(1)
3-65 or (2).
3-66 (c) On the motion of any party or on the court's own motion,
3-67 the court may replace a trustee who is unable to satisfy the
3-68 requirements of Subsection (a)(1) or (2).
3-69 (d) A trustee's charges must separately identify personal

4-1 hours worked for which compensation is claimed. A trustee's claim
 4-2 for personal compensation may include only compensation for
 4-3 activities related to the trusteeship and performed in or on behalf
 4-4 of the hospital.

4-5 Sec. 241.083. COMPENSATION; RELEASE OF FUNDS. (a) A
 4-6 trustee appointed under this subchapter is entitled to reasonable
 4-7 compensation as determined by the court. On the motion of any
 4-8 party, the court shall review the reasonableness of the trustee's
 4-9 compensation. The court shall reduce the amount if the court
 4-10 determines that the compensation is not reasonable.

4-11 (b) The trustee may petition the court to order the release
 4-12 to the trustee of any payment owed the trustee for care and services
 4-13 provided to the patients if the payment has been withheld,
 4-14 including a payment withheld by the commission at the
 4-15 recommendation of the department.

4-16 (c) Withheld payments may include payments withheld by a
 4-17 governmental agency or other entity during the appointment of the
 4-18 trustee, such as payments:

4-19 (1) for Medicaid, Medicare, or insurance;

4-20 (2) by another third party; or

4-21 (3) for medical expenses borne by the patient.

4-22 (d) Payments withheld under 42 C.F.R. Section 455.23 or
 4-23 Section 531.102(g), Government Code, are not subject to release
 4-24 under this section.

4-25 Sec. 241.084. COMMUNICATIONS BY TRUSTEE. (a) Except as
 4-26 provided by Subsection (b), a trustee appointed under this
 4-27 subchapter shall provide periodic reports to the department and the
 4-28 governing body of the hospital regarding:

4-29 (1) the status of the hospital following the emergency
 4-30 order to suspend the hospital's license and during the period the
 4-31 hospital is operated by the trustee; and

4-32 (2) each activity performed by the trustee on behalf
 4-33 of the hospital.

4-34 (b) A trustee is not required to report to the governing
 4-35 body of the hospital any information that may limit or impair the
 4-36 authority or activities of the trustee.

4-37 Sec. 241.085. EXEMPTION. This subchapter does not apply to
 4-38 a hospital owned, operated, or leased by a governmental entity.

4-39 SUBCHAPTER D-1. HOSPITAL PERPETUAL CARE ACCOUNT; FEE

4-40 Sec. 241.091. HOSPITAL PERPETUAL CARE ACCOUNT. (a) The
 4-41 hospital perpetual care account is a dedicated account in the
 4-42 general revenue fund.

4-43 (b) The account consists of:

4-44 (1) fees deposited to the credit of the account under
 4-45 this subchapter; and

4-46 (2) money transferred or appropriated to the account
 4-47 by the legislature.

4-48 (c) The executive commissioner shall administer the
 4-49 account. Money in the account may be used only to pay for
 4-50 department costs associated 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 may impose and the department may collect a
 4-59 fee from each hospital in an amount necessary to maintain a balance
 4-60 of \$5 million in the hospital perpetual care account at all times.

4-61 (b) The fee imposed under this section shall be deposited to
 4-62 the credit of the hospital perpetual care account.

4-63 (c) The department shall suspend collection of the fee for
 4-64 the duration of a period during which the balance of the hospital
 4-65 perpetual care account is \$5 million or more.

4-66 SECTION 7. (a) The executive commissioner of the Health
 4-67 and Human Services Commission shall adopt the rules required by
 4-68 Chapter 241, Health and Safety Code, as amended by this Act, not
 4-69 later than May 1, 2018.

5-1 (b) The changes in law made by this Act apply only to an
5-2 application submitted under Section 241.022, Health and Safety
5-3 Code, as amended by this Act, or the assessment or imposition of an
5-4 administrative penalty under Section 241.059, Health and Safety
5-5 Code, as amended by this Act, for a violation that occurs on or
5-6 after the effective date of this Act. An application submitted
5-7 under Section 241.022 before the effective date of this Act or the
5-8 assessment or imposition of an administrative penalty under Section
5-9 241.059 for a violation that occurs before the effective date of
5-10 this Act is governed by the law in effect on the date the
5-11 application was submitted or the violation occurred, and that law
5-12 is continued in effect for that purpose.

5-13 (c) Notwithstanding Section 6(e)(2)(B), Chapter 615 (S.B.
5-14 1367), Acts of the 83rd Legislature, Regular Session, 2013, on
5-15 January 1, 2018, the commissioner of insurance shall transfer \$5
5-16 million from the fund established under Subchapter F, Chapter 1508,
5-17 Insurance Code, to the hospital perpetual care account established
5-18 under Section 241.091, Health and Safety Code, as added by this Act.

5-19 SECTION 8. This Act takes effect immediately if it receives
5-20 a vote of two-thirds of all the members elected to each house, as
5-21 provided by Section 39, Article III, Texas Constitution. If this
5-22 Act does not receive the vote necessary for immediate effect, this
5-23 Act takes effect September 1, 2017.

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