

1 **CORRECTED**

2
3 STATE OF OKLAHOMA

4 2nd Session of the 57th Legislature (2020)

5 COMMITTEE SUBSTITUTE

6 FOR

HOUSE BILL 2780

By: Olsen

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9 COMMITTEE SUBSTITUTE

10 An Act relating to medical facilities; defining
11 terms; prohibiting operation of certain facility
12 without a license; providing certain interpretation;
13 requiring separate license for each location;
14 prohibiting transfer or assignment of certain
15 license; providing penalty for noncompliance;
16 requiring the establishment of certain
17 classification; requiring written permission for
18 establishment of facilities in certain cities;
19 providing certain exceptions; setting requirements
20 for certain application; requiring licensing fee;
21 requiring State Commissioner of Health to adopt
22 certain rules and set certain fees; authorizing
23 facility inspections; requiring licensing fees to be
24 deposited in certain revolving fund; requiring State
Commissioner of Health to adopt certain rules;
requiring consultation; requiring facility to provide
examination for determination of emergency medical
condition; requiring facility to meet certain
standards; requiring agreement; prohibiting certain
reimbursement; authorizing complaints against certain
facilities to be filed with the State Department of
Health; authorizing State Department of Health to
take certain action for certain violations;
authorizing emergency order of license suspension;
providing procedure for hearing; authorizing petition
for temporary restraining order; authorizing district
courts to issue injunctions; directing the Attorney
General to file suit at request of Department;

1 establishing venue; authorizing administrative
2 penalties; limiting amount of penalties; providing
3 bases for calculating amount of penalty; requiring
4 certain written notice; specifying information to be
5 included in written notice; providing for judicial
6 review of certain order; creating revolving fund;
7 providing for codification; and providing an
8 effective date.

8 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

9 SECTION 1. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 2667 of Title 63, unless there
11 is created a duplication in numbering, reads as follows:

12 As used in this act:

- 13 1. "Commissioner" means the State Commissioner of Health;
- 14 2. "Department" means the State Department of Health;
- 15 3. "Emergency care" means health care services provided to
16 achieve stabilization as needed for conditions that reasonably
17 appear to constitute a life- or limb-threatening emergency based on
18 the presenting symptoms of the patient;
- 19 4. "Facility" means a short-term emergency and nonemergency
20 hybrid medical facility;
- 21 5. "Maximum emergency stay period" means any patient who is
22 treated for an emergency situation and is prohibited from being
23 treated or held any longer than twenty-four (24) hours so long as
24 the necessary treatment required is deemed an emergency. Maximum

1 emergency stay period shall not apply to patients that are
2 stabilized and needing further nonemergency care;

3 6. "Nonemergency care" means all health care that is not for
4 life-threatening conditions or covered as emergency care under an
5 existing health care policy, including, but not limited to, the
6 following services:

- 7 a. X-rays, magnetic resonance imaging (MRI), and other
- 8 types of imaging,
- 9 b. diagnostic testing,
- 10 c. lab tests,
- 11 d. primary care, and
- 12 e. outpatient services; and

13 7. "Short-term emergency and nonemergency hybrid medical
14 facility" means a dual sided facility, structurally separate and
15 distinct from a hospital, that is open twenty-four (24) hours per
16 day and seven (7) days per week, with one side of the facility
17 providing emergency care and the other side of the facility
18 providing nonemergency care.

19 SECTION 2. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 2668 of Title 63, unless there
21 is created a duplication in numbering, reads as follows:

22 A. Except as provided by Section 3 of this act, a person shall
23 not establish or operate a short-term emergency and nonemergency
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1 hybrid medical facility in this state without a license issued under
2 this act.

3 B. Except as provided by Section 3 of this act, a facility
4 shall not hold itself out to the public as a short-term emergency
5 and nonemergency hybrid medical facility or use any similar term, as
6 defined by State Department of Health rule, that would give the
7 impression that the facility or person is providing emergency care
8 unless the facility or person holds a license issued under this act.

9 C. Nothing in this act shall be interpreted to prohibit a
10 licensed short-term emergency and nonemergency hybrid medical
11 facility from providing other health care services including, but
12 not limited to, imaging, primary care, nonemergency care and other
13 ancillary services.

14 D. Each separate facility location shall have a separate
15 license.

16 E. A license issued under this act is not transferable or
17 assignable.

18 F. Any person who is convicted of violating a provision of this
19 section shall be guilty of a misdemeanor. Each day of a continuing
20 violation constitutes a separate offense.

21 G. The State Commissioner of Health by rule shall establish a
22 classification for a facility that is in continuous operation
23 twenty-four (24) hours per day and seven (7) days per week.

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1 H. No license shall be issued to a facility located in a city
2 with an established hospital and a population of less than thirty
3 thousand (30,000) people unless written permission is obtained from
4 the hospital to operate a short-term emergency and nonemergency
5 hybrid medical facility.

6 I. No license shall be issued to a facility located in a city
7 with a population of more than seventy-five thousand (75,000)
8 people.

9 SECTION 3. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 2669 of Title 63, unless there
11 is created a duplication in numbering, reads as follows:

12 The following facilities shall not be required to be licensed
13 under this act:

- 14 1. An office or clinic owned and operated by a manufacturing
15 facility solely for the purposes of treating its employees and
16 contractors;
- 17 2. Temporary emergency clinics in disaster areas;
- 18 3. An office or clinic of a licensed dentist, optometrist or
19 podiatrist;
- 20 4. A licensed nursing home;
- 21 5. A licensed hospital;
- 22 6. A hospital that is owned and operated by this state;
- 23 7. A facility located within or connected to a hospital
24 described in paragraph 5 or 6 of this section;

1 8. A facility that is owned or operated by a hospital described
2 in paragraph 5 or 6 of this section and is:

- 3 a. surveyed as a service of the hospital by an
4 organization that has been granted deeming authority
5 as a national accreditation program for hospitals by
6 the federal Centers for Medicare and Medicaid
7 Services, or
- 8 b. granted provider-based status by the Centers for
9 Medicare and Medicaid Services; or

10 9. A licensed ambulatory surgical center.

11 SECTION 4. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 2670 of Title 63, unless there
13 is created a duplication in numbering, reads as follows:

14 A. An applicant for a license under this act shall submit an
15 application to the State Department of Health on a form prescribed
16 by the Department.

17 B. Each application shall be accompanied by a nonrefundable
18 license fee in an amount set by the State Commissioner of Health.

19 C. The application shall require that an emergency room is
20 staffed by board-certified emergency room physicians licensed by the
21 Oklahoma State Board of Medical Licensure and Supervision.

22 D. The application shall contain evidence that the facility
23 meets the minimum standards and requirements specified in Section 9
24 of this act.

1 E. The Department shall issue a license if, after inspection
2 and investigation, it finds that the applicant and the facility meet
3 the requirements of this act and the standards adopted under this
4 act.

5 F. The license fee shall be paid annually on renewal of the
6 license.

7 SECTION 5. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 2671 of Title 63, unless there
9 is created a duplication in numbering, reads as follows:

10 The State Commissioner of Health shall adopt rules necessary to
11 implement this act, including requirements for the issuance,
12 renewal, denial, suspension and revocation of a license to operate a
13 facility.

14 SECTION 6. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 2672 of Title 63, unless there
16 is created a duplication in numbering, reads as follows:

17 The State Commissioner of Health shall set fees imposed by this
18 act in amounts reasonable and necessary to defray the cost of
19 administering this act.

20 SECTION 7. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 2673 of Title 63, unless there
22 is created a duplication in numbering, reads as follows:

23 The State Department of Health may inspect a facility at
24 reasonable times to ensure compliance with this act.

1 SECTION 8. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 2674 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

4 All fees collected under this act shall be deposited in the
5 State Treasury to the credit of the Short-term Emergency and
6 Nonemergency Hybrid Medical Facility Licensing Fund created by
7 Section 17 of this act for the administration and enforcement of
8 this act and for no other purposes.

9 SECTION 9. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 2675 of Title 63, unless there
11 is created a duplication in numbering, reads as follows:

12 A. The State Commissioner of Health shall adopt rules necessary
13 to implement this act, including standards for:

14 1. The construction and design of the facility including
15 plumbing, heating, lighting, ventilation and other design standards
16 necessary to ensure the health and safety of patients;

17 2. Any transportation accommodations which shall be required
18 unless a facility is located where air transportation is expressly
19 prohibited by Title 14 of the Code of Federal Regulations;

20 3. The number, qualifications and organization of the
21 professional staff and other personnel, including the requirement
22 that each facility staff board-certified emergency room physicians
23 when providing emergency care;

24 4. The administration of the facility;

- 1 5. The equipment essential to the health and welfare of the
2 patients;
- 3 6. The sanitary and hygienic conditions within the facility and
4 its surroundings;
- 5 7. The requirements for the contents, maintenance and release
6 of medical records;
- 7 8. The minimal level of care and standards for denial of care;
- 8 9. The provision of laboratory and radiological services;
- 9 10. The distribution and administration of drugs and controlled
10 substances;
- 11 11. A quality assurance program for patient care;
- 12 12. Disclosure, if applicable, of the following:
 - 13 a. the name and Social Security number of the sole
14 proprietor, if the facility is a sole proprietor,
 - 15 b. the name and Social Security number of each general
16 partner who is an individual, if the facility is a
17 partnership,
 - 18 c. the name and Social Security number of any individual
19 who has an ownership interest of more than twenty-five
20 percent (25%) in the corporation, if the facility is a
21 corporation, and
 - 22 d. the names and license numbers of any physicians
23 licensed by the State Board of Medical Licensure and
24 Supervision or the State Board of Osteopathic

1 Examiners who have a financial interest in the
2 facility or any entity which has an ownership interest
3 in the facility;

4 13. Transfer protocols for patients requiring advanced medical
5 care at a hospital and who require emergency medical treatment
6 extending past the twenty-four-hour maximum stay period; and

7 14. Any other aspect of the operation of a facility that the
8 Commissioner considers necessary to protect the facility's patients
9 and the public.

10 B. In adopting the rules required under subsection A of this
11 section concerning transfer protocols, the Commissioner shall
12 consult with physicians who provide emergency care and medical
13 consultant organizations.

14 SECTION 10. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 2676 of Title 63, unless there
16 is created a duplication in numbering, reads as follows:

17 A. A facility shall provide to each emergency patient, without
18 regard to the individual's ability to pay, an appropriate medical
19 screening, examination and stabilization within the facility's
20 capability, including ancillary services routinely available to the
21 facility, to determine whether an emergency medical condition exists
22 and to determine any necessary stabilizing treatment.

1 B. Each facility shall meet those standards set forth by 42
2 U.S.C., Section 1395dd, the Emergency Medical Treatment and Labor
3 Act.

4 C. Before a facility accepts any patient for treatment or
5 diagnosis, the facility shall enter into a referral, transmission or
6 admission agreement with a hospital licensed in this state.

7 D. An insurer or third-party administrator shall be prohibited
8 from reimbursing a facility licensed under this act on a discounted
9 fee basis for covered services that are provided to an insured
10 unless:

11 1. The insurer or third-party administrator has contracted with
12 either:

13 a. the physician or other practitioner, institutional
14 provider, or organization of physicians and health
15 care providers, or

16 b. the health maintenance organization, exclusive
17 provider organization, or preferred provider
18 organization that has a network of preferred providers
19 and that has contracted with the physician or other
20 practitioner, institutional provider, or organization
21 of physicians and health care providers;

22 2. The physician or other practitioner, institutional provider,
23 or organization of physicians and health care providers has agreed
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1 to the contract and to provide health care services under the terms
2 of the contract; and

3 3. The insurer or third-party administrator has agreed to
4 provide coverage for those health care services under the health
5 insurance policy.

6 SECTION 11. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 2677 of Title 63, unless there
8 is created a duplication in numbering, reads as follows:

9 A person may file a complaint with the State Department of
10 Health against a facility licensed under this act.

11 SECTION 12. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 2678 of Title 63, unless there
13 is created a duplication in numbering, reads as follows:

14 A. The State Department of Health may deny, suspend or revoke a
15 license for a violation of this act or a rule adopted under this
16 act.

17 B. If the Department finds that a facility is in repeated
18 noncompliance with this act or rules adopted under this act but the
19 noncompliance does not endanger public health and safety, the
20 Department may schedule the facility for probation rather than
21 suspending or revoking the facility's license. The Department shall
22 provide notice to the facility of the probation and of the items of
23 noncompliance not later than the tenth day before the date the
24 probation period begins. The Department shall designate a period of

1 not less than thirty (30) calendar days during which the facility
2 remains under probation. During the probation period, the facility
3 must correct the items that were in noncompliance and report the
4 corrections to the Department for approval.

5 C. The Department may suspend or revoke the license of a
6 facility that does not correct items that were in noncompliance or
7 that does not comply with this act or the rules adopted under this
8 act within the applicable probation period.

9 SECTION 13. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 2679 of Title 63, unless there
11 is created a duplication in numbering, reads as follows:

12 A. The State Department of Health may issue an emergency order
13 to suspend a license issued under this act if the Department has
14 reasonable cause to believe that the conduct of a license holder
15 creates an immediate danger to the public health or safety.

16 B. An emergency suspension under this section is effective
17 immediately without a hearing or notice to the license holder.

18 C. On written request of the license holder, the Department
19 shall conduct a hearing not earlier than the tenth day or later than
20 the thirtieth day after the date the hearing request is received to
21 determine if the emergency suspension is to be continued, modified
22 or rescinded.

23 D. A hearing and any appeal under this section are governed by
24 the Department's rules.

1 SECTION 14. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 2680 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

4 A. The State Department of Health may petition a district court
5 for a temporary restraining order for a continuing violation of the
6 standards or licensing requirements provided under this act if the
7 Department finds that the violation creates an immediate threat to
8 the health or safety of the patients of a facility.

9 B. A district court, on petition of the Department and on a
10 finding by the court that a person is violating the standards or
11 licensing requirements provided under this act, may by injunction:

12 1. Prohibit a person from continuing a violation of the
13 standards or licensing requirements provided under this act;

14 2. Restrain or prevent the establishment or operation of a
15 facility without a license issued under this act; or

16 3. Grant any other injunctive relief warranted by the facts.

17 C. The Attorney General shall institute and conduct a suit
18 authorized by this section at the request of the Department.

19 D. Venue for a suit brought under this section is in the county
20 in which the facility is located or in Oklahoma County.

21 SECTION 15. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 2681 of Title 63, unless there
23 is created a duplication in numbering, reads as follows:

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1 A. The State Department of Health may impose an administrative
2 penalty on a person licensed under this act who violates this act or
3 a rule or order adopted under this act. A penalty collected under
4 this section or Section 16 of this act shall be deposited in the
5 State Treasury in the General Revenue Fund.

6 B. A proceeding to impose the penalty is considered to be a
7 contested case.

8 C. The amount of the penalty may not exceed One Thousand
9 Dollars (\$1,000.00) for each violation, and each day a violation
10 continues or occurs is a separate violation for purposes of imposing
11 a penalty. The total amount of the penalty assessed for a violation
12 continuing or occurring on separate days under this subsection may
13 not exceed Five Thousand Dollars (\$5,000.00).

14 D. The amount shall be based on:

15 1. The seriousness of the violation, including the nature,
16 circumstances, extent and gravity of the violation;

17 2. The threat to health or safety caused by the violation;

18 3. The history of previous violations;

19 4. The amount necessary to deter a future violation;

20 5. Whether the violator demonstrated good faith, including,
21 when applicable, whether the violator made good-faith efforts to
22 correct the violation; and

23 6. Any other matter that the Department may require.
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1 E. If the Department initially determines that a violation
2 occurred, the Department shall give written notice by certified mail
3 to the person.

4 F. The notice under subsection E of this section shall:

- 5 1. Include a brief summary of the alleged violation;
- 6 2. State the amount of the recommended penalty; and
- 7 3. Inform the person of the person's right to a hearing on the
8 occurrence of the violation, the amount of the penalty, or both.

9 G. Within twenty (20) calendar days after the date the person
10 receives the notice under subsection E of this section, the person
11 in writing may:

- 12 1. Accept the determination and recommended penalty of the
13 Department; or
- 14 2. Make a request for a hearing on the occurrence of the
15 violation, the amount of the penalty, or both.

16 H. If the person accepts the determination and recommended
17 penalty or if the person fails to respond to the notice, the State
18 Commissioner of Health by order shall approve the determination and
19 impose the recommended penalty.

20 I. The notice of the order shall include a statement of the
21 right of the person to judicial review of the order.

22 SECTION 16. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 2682 of Title 63, unless there
24 is created a duplication in numbering, reads as follows:

1 A. Within thirty (30) calendar days after the date an order of
2 the State Commissioner of Health that imposes an administrative
3 penalty becomes final, the person shall:

4 1. Pay the penalty; or

5 2. File a petition for judicial review of the Commissioner's
6 order contesting the occurrence of the violation, the amount of the
7 penalty, or both.

8 B. Within the thirty-day period prescribed by subsection A of
9 this section, a person who files a petition for judicial review may:

10 1. Stay enforcement of the penalty:

11 a. by paying the penalty to the court for placement in an
12 escrow account, or

13 b. by giving the court a supersedeas bond approved by the
14 court that:

15 (1) is for the amount of the penalty, and

16 (2) is effective until all judicial review of the
17 Commissioner's order is final; or

18 2. Request the court to stay enforcement of the penalty by
19 filing with the court a sworn affidavit of the person stating that
20 the person is financially unable to pay the penalty and is
21 financially unable to give the supersedeas bond and by sending a
22 copy of the affidavit to the Commissioner by certified mail.

23 C. If the Commissioner receives a copy of an affidavit under
24 subsection B of this section, the Commissioner may file with the

1 court, within five (5) calendar days after the date the copy is
2 received, a contest to the affidavit. The court shall hold a
3 hearing on the facts alleged in the affidavit as soon as practicable
4 and shall stay the enforcement of the penalty on finding that the
5 alleged facts are true. The person who files an affidavit has the
6 burden of proving that the person is financially unable to pay the
7 penalty or to give a supersedeas bond.

8 D. If the person does not pay the penalty and the enforcement
9 of the penalty is not stayed, the penalty may be collected. The
10 Attorney General may sue to collect the penalty.

11 E. If the court sustains the finding that a violation occurred,
12 the court may uphold or reduce the amount of the penalty and order
13 the person to pay the full or reduced amount of the penalty.

14 F. If the court does not sustain the finding that a violation
15 occurred, the court shall order that a penalty is not owed.

16 G. If the person paid the penalty and if the amount of the
17 penalty is reduced or the penalty is not upheld by the court, the
18 court shall order, when the court's judgment becomes final, that the
19 appropriate amount plus accrued interest be remitted to the person
20 within thirty (30) calendar days after the date that the judgment of
21 the court becomes final. The interest accrues at the rate charged
22 on loans to depository institutions by the Federal Reserve Bank of
23 New York. The interest shall be paid for the period beginning on
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1 the date the penalty is paid and ending on the date the penalty is
2 remitted.

3 H. If the person gave a supersedeas bond and the penalty is not
4 upheld by the court, the court shall order, when the court's
5 judgment becomes final, the release of the bond. If the person gave
6 a supersedeas bond and the amount of the penalty is reduced, the
7 court shall order the release of the bond after the person pays the
8 reduced amount.

9 SECTION 17. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 2683 of Title 63, unless there
11 is created a duplication in numbering, reads as follows:

12 There is hereby created in the State Treasury a revolving fund
13 for the State Department of Health to be designated the "Short-term
14 Emergency and Nonemergency Hybrid Medical Facility Licensing Fund".
15 The fund shall be a continuing fund, not subject to fiscal year
16 limitations, and shall consist of all monies received by the State
17 Department of Health from short-term emergency and nonemergency
18 hybrid medical facilities. All monies accruing to the credit of the
19 fund are hereby appropriated and may be budgeted and expended by the
20 State Department of Health for the purpose of administering and
21 enforcing licensing provisions for short-term emergency and
22 nonemergency hybrid medical facilities. Expenditures from the fund
23 shall be made upon warrants issued by the State Treasurer against
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1 claims filed as prescribed by law with the Director of the Office of
2 Management and Enterprise Services for approval and payment.

3 SECTION 18. This act shall become effective November 1, 2020.

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