

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 3502

By: Sneed

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6
7 AS INTRODUCED

8 An Act relating to medical facilities; defining
9 terms; prohibiting operation of certain facility
10 without a license; providing certain interpretation;
11 requiring separate license for each location;
12 prohibiting transfer or assignment of certain
13 license; providing penalty for noncompliance;
14 requiring the establishment of certain
15 classification; providing certain exceptions; setting
16 requirements for certain application; requiring
17 licensing fee; requiring State Commissioner of Health
18 to adopt certain rules and set certain fees;
19 authorizing facility inspections; requiring licensing
20 fees to be deposited in certain revolving fund;
21 requiring State Commissioner of Health to adopt
22 certain rules; requiring consultation; requiring
23 facility to provide examination for determination of
24 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; establishing venue;
authorizing administrative penalties; limiting amount
of penalties; providing bases for calculating amount
of penalty; requiring certain written notice;
specifying information to be included in written
notice; providing for judicial review of certain

1 order; creating revolving fund; providing for
2 codification; and providing an effective date.

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

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

8 As used in this act:

9 1. "Department" means the State Department of Health;

10 2. "Emergency care" means health care services provided to
11 achieve stabilization as needed for conditions that reasonably
12 appear to constitute a life- or limb-threatening emergency based on
13 the presenting symptoms of the patient;

14 3. "Commissioner" means the State Commissioner of Health;

15 4. "Facility" means a short-term emergency and nonemergency
16 hybrid medical facility;

17 5. "Maximum emergency stay period" means any patient who is
18 treated for an emergency situation and is prohibited from being
19 treated or held any longer than twenty-four (24) hours so long as
20 the necessary treatment required is deemed an emergency. Maximum
21 emergency stay period shall not apply to patients that are
22 stabilized and needing further treatment from being provided
23 nonemergent care; and
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1 6. "Short-term emergency and nonemergency facility" means a
2 facility, structurally separate and distinct from a hospital that
3 receives an individual and provides emergency care as defined by
4 paragraph 2 of this section or nonemergent care, which means all
5 health care that is not life threatening or covered as emergency
6 care under an existing health care policy.

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

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

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

20 C. Nothing in this act shall be interpreted to prohibit a
21 licensed short-term emergency and nonemergency hybrid medical
22 facility from providing other health care services including, but
23 not limited to, imaging, primary care, nonemergent care and other
24 ancillary services.

1 D. Each separate facility location shall have a separate
2 license.

3 E. A license issued under this act is not transferable or
4 assignable.

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

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

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

14 The following facilities shall not be required to be licensed
15 under this act:

16 1. An office or clinic owned and operated by a manufacturing
17 facility solely for the purposes of treating its employees and
18 contractors;

19 2. Temporary emergency clinics in disaster areas;

20 3. An office or clinic of a licensed dentist, optometrist or
21 podiatrist;

22 4. A licensed nursing home;

23 5. A licensed hospital;

24 6. A hospital that is owned and operated by this state;

1 7. A facility located within or connected to a hospital
2 described by paragraph 5 or 6 of this section;

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

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

10 b. granted provider-based status by the Centers for
11 Medicare and Medicaid Services; or

12 9. A licensed ambulatory surgical center.

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

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

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

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

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1 D. The application shall contain evidence that the facility
2 meets the minimum standards and requirements specified in Section 9
3 of this act.

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

8 F. The license fee shall be paid annually on renewal of the
9 license.

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

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

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

20 The State Commissioner of Health shall set fees imposed by this
21 act in amounts reasonable and necessary to defray the cost of
22 administering this act.

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

4 The State Department of Health may inspect a facility at
5 reasonable times as necessary to ensure compliance with this act.

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

9 All fees collected under this act shall be deposited in the
10 State Treasury to the credit of the Short-term Emergency and
11 Nonemergency Hybrid Medical Facility Licensing Fund created by
12 Section 17 of this act for the administration and enforcement of
13 this act and for no other purposes.

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

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

19 1. The construction and design of the facility including
20 plumbing, heating, lighting, ventilation, proper air-transportation
21 accommodations, and other design standards necessary to ensure the
22 health and safety of patients;

23 2. The number, qualifications and organization of the
24 professional staff and other personnel, including the requirement

1 that each facility staff board-certified emergency room physicians
2 when providing emergency care, and be prohibited from holding
3 patients longer than twenty-four (24) hours unless there are
4 extenuating circumstances as defined by the State Department of
5 Health;

6 3. The administration of the facility;

7 4. The equipment essential to the health and welfare of the
8 patients;

9 5. The sanitary and hygienic conditions within the facility and
10 its surroundings;

11 6. The requirements for the contents, maintenance and release
12 of medical records;

13 7. The minimal level of care and standards for denial of care;

14 8. The provision of laboratory and radiological services;

15 9. The distribution and administration of drugs and controlled
16 substances;

17 10. A quality assurance program for patient care;

18 11. Disclosure, if applicable, of the following:

19 a. the name and Social Security number of the sole
20 proprietor, if the facility is a sole proprietor,

21 b. the name and Social Security number of each general
22 partner who is an individual, if the facility is a
23 partnership,
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1 c. the name and Social Security number of any individual
2 who has an ownership interest of more than twenty-five
3 percent (25%) in the corporation, if the facility is a
4 corporation, and

5 d. the names and license numbers of any physicians
6 licensed by the State Board of Medical Licensure and
7 Supervision or the State Board of Osteopathic
8 Examiners who have a financial interest in the
9 facility or any entity which has an ownership interest
10 in the facility;

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

14 13. Any other aspect of the operation of a facility that the
15 Commissioner considers necessary to protect the facility's patients
16 and the public.

17 B. In adopting the rules required under subsection A of this
18 section concerning transfer protocols, the Commissioner shall
19 consult with physicians who provide emergency care and medical
20 consultant organizations.

21 SECTION 10. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 2676 of Title 63, unless there
23 is created a duplication in numbering, reads as follows:
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1 A. A facility shall provide to each facility emergency patient,
2 without regard to the individual's ability to pay, an appropriate
3 medical screening, examination and stabilization within the
4 facility's capability, including ancillary services routinely
5 available to the facility, to determine whether an emergency medical
6 condition exists and to determine any necessary stabilizing
7 treatment.

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

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

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

18 1. The insurer or third-party administrator has contracted with
19 either:

20 a. the physician or other practitioner, institutional
21 provider, or organization of physicians and health
22 care providers, or

23 b. the health maintenance organization, exclusive
24 provider organization, or preferred provider

1 organization that has a network of preferred providers
2 and that has contracted with the physician or other
3 practitioner, institutional provider, or organization
4 of physicians and health care providers;

5 2. The physician or other practitioner, institutional provider,
6 or organization of physicians and health care providers has agreed
7 to the contract and to provide health care services under the terms
8 of the contract; and

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

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

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

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

20 A. The State Department of Health may deny, suspend or revoke a
21 license for a violation of this act or a rule adopted under this
22 act.

23 B. If the Department finds that a facility is in repeated
24 noncompliance with this act or rules adopted under this act but the

1 noncompliance does not endanger public health and safety, the
2 Department may schedule the facility for probation rather than
3 suspending or revoking the facility's license. The Department shall
4 provide notice to the facility of the probation and of the items of
5 noncompliance not later than the tenth day before the date the
6 probation period begins. The Department shall designate a period of
7 not less than thirty (30) calendar days during which the facility
8 remains under probation. During the probation period, the facility
9 must correct the items that were in noncompliance and report the
10 corrections to the Department for approval.

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

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

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

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

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1 C. On written request of the license holder, the Department
2 shall conduct a hearing not earlier than the tenth day or later than
3 the thirtieth day after the date the hearing request is received to
4 determine if the emergency suspension is to be continued, modified
5 or rescinded.

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

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

11 A. The State Department of Health may petition a district court
12 for a temporary restraining order to restrain a continuing violation
13 of the standards or licensing requirements provided under this act
14 if the Department finds that the violation creates an immediate
15 threat to the health or safety of the patients of a facility.

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

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

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

23 3. Grant any other injunctive relief warranted by the facts.
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1 C. The Attorney General shall institute and conduct a suit
2 authorized by this section at the request of the Department.

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

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

8 A. The State Department of Health may impose an administrative
9 penalty on a person licensed under this act who violates this act or
10 a rule or order adopted under this act. A penalty collected under
11 this section or Section 16 of this act shall be deposited in the
12 State Treasury in the General Revenue Fund.

13 B. A proceeding to impose the penalty is considered to be a
14 contested case.

15 C. The amount of the penalty may not exceed One Thousand
16 Dollars (\$1,000.00) for each violation, and each day a violation
17 continues or occurs is a separate violation for purposes of imposing
18 a penalty. The total amount of the penalty assessed for a violation
19 continuing or occurring on separate days under this subsection may
20 not exceed Five Thousand Dollars (\$5,000.00).

21 D. The amount shall be based on:

22 1. The seriousness of the violation, including the nature,
23 circumstances, extent and gravity of the violation;

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

1 3. The history of previous violations;

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

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

6 6. Any other matter that the Department may require.

7 E. If the Department initially determines that a violation
8 occurred, the Department shall give written notice of the report by
9 certified mail to the person.

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

11 1. Include a brief summary of the alleged violation;

12 2. State the amount of the recommended penalty; and

13 3. Inform the person of the person's right to a hearing on the
14 occurrence of the violation, the amount of the penalty, or both.

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

18 1. Accept the determination and recommended penalty of the
19 Department; or

20 2. Make a request for a hearing on the occurrence of the
21 violation, the amount of the penalty, or both.

22 H. If the person accepts the determination and recommended
23 penalty or if the person fails to respond to the notice, the State
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1 Commissioner of Health by order shall approve the determination and
2 impose the recommended penalty.

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

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

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

- 11 1. Pay the penalty; or
- 12 2. File a petition for judicial review of the Commissioner's
13 order contesting the occurrence of the violation, the amount of the
14 penalty, or both.

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

- 17 1. Stay enforcement of the penalty:
 - 18 a. by paying the penalty to the court for placement in an
19 escrow account, or
 - 20 b. by giving the court a supersedeas bond approved by the
21 court that:
 - 22 (1) is for the amount of the penalty, and
 - 23 (2) is effective until all judicial review of the
24 Commissioner's order is final; or

1 2. Request the court to stay enforcement of the penalty by
2 filing with the court a sworn affidavit of the person stating that
3 the person is financially unable to pay the penalty and is
4 financially unable to give the supersedeas bond and by sending a
5 copy of the affidavit to the Commissioner by certified mail.

6 C. If the Commissioner receives a copy of an affidavit under
7 subsection B of this section, the Commissioner may file with the
8 court, within five (5) calendar days after the date the copy is
9 received, a contest to the affidavit. The court shall hold a
10 hearing on the facts alleged in the affidavit as soon as practicable
11 and shall stay the enforcement of the penalty on finding that the
12 alleged facts are true. The person who files an affidavit has the
13 burden of proving that the person is financially unable to pay the
14 penalty or to give a supersedeas bond.

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

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

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

23 G. If the person paid the penalty and if the amount of the
24 penalty is reduced or the penalty is not upheld by the court, the

1 court shall order, when the court's judgment becomes final, that the
2 appropriate amount plus accrued interest be remitted to the person
3 within thirty (30) calendar days after the date that the judgment of
4 the court becomes final. The interest accrues at the rate charged
5 on loans to depository institutions by the Federal Reserve Bank of
6 New York. The interest shall be paid for the period beginning on
7 the date the penalty is paid and ending on the date the penalty is
8 remitted.

9 H. If the person gave a supersedeas bond and the penalty is not
10 upheld by the court, the court shall order, when the court's
11 judgment becomes final, the release of the bond. If the person gave
12 a supersedeas bond and the amount of the penalty is reduced, the
13 court shall order the release of the bond after the person pays the
14 reduced amount.

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

18 There is hereby created in the State Treasury a revolving fund
19 for the State Department of Health to be designated the "Short-term
20 Emergency and Nonemergency Hybrid Medical Facility Licensing Fund".
21 The fund shall be a continuing fund, not subject to fiscal year
22 limitations, and shall consist of all monies received by the State
23 Department of Health from short-term emergency and nonemergency
24 hybrid medical facilities. All monies accruing to the credit of the

1 fund are hereby appropriated and may be budgeted and expended by the
2 State Department of Health for the purpose of administering and
3 enforcing licensing provisions for short-term emergency and
4 nonemergency hybrid medical facilities. Expenditures from the fund
5 shall be made upon warrants issued by the State Treasurer against
6 claims filed as prescribed by law with the Director of the Office of
7 Management and Enterprise Services for approval and payment.

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

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