



Tennessee Senate

PUBLIC CHAPTER NO. 932

SENATE BILL NO. 2022

By Reeves, Powers

Substituted for: House Bill No. 2650

By Helton-Haynes, Vital, Rudder, Hazlewood, Alexander, Terry

AN ACT to amend Tennessee Code Annotated, Title 4; Title 63; Title 68 and Title 71, relative to the health facilities commission.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 11, Part 2, is amended by adding the following as a new section:

Notwithstanding another law, the home addresses, telephone numbers, dates of birth, and photographs of current or former personnel of the health facilities commission or board for licensing healthcare facilities whose duties include the investigation of complaints filed against healthcare facilities, or the inspection of healthcare facilities licensed or certified by the health facilities commission or the board for licensing healthcare facilities, as well as the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel, including the names and locations of schools and day care facilities attended by the children of such personnel are not a public record open to inspection and are exempt from public disclosure pursuant to title 10, chapter 7, part 5.

SECTION 2. Tennessee Code Annotated, Section 68-11-252, is amended by deleting subsections (g) and (h) and substituting:

(g) All contested cases pursuant to subsection (f) must be conducted according to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, and must be heard within thirty (30) calendar days of the health facilities commission's filing of a notice of hearing, unless otherwise agreed to by both parties.

(h) An order in all cases contesting a suspension of admissions must be issued within twenty (20) working days after the receipt of the trial transcript and proposed findings of fact and conclusions of law, regardless of whether the hearing is conducted before the board or an administrative judge. The order must determine whether the suspension of admissions was initially valid and whether conditions at the facility or licensee continue to be detrimental to the health, safety, or welfare of a patient or resident to justify the continuation of the suspension of admissions if not previously lifted.

SECTION 3. Tennessee Code Annotated, Section 68-11-815, is amended by deleting the section.

SECTION 4. Tennessee Code Annotated, Section 68-11-806(d)(4), is amended by deleting the language "68-11-815,".

SECTION 5. Tennessee Code Annotated, Section 68-11-816(a), is amended by deleting the language "Five (5) working days" and substituting "Ten (10) working days", and by deleting the language "with the administrative procedures division of the secretary of state and".

SECTION 6. Tennessee Code Annotated, Section 68-11-816(b), is amended by deleting the language "to have admitted the allegations of the assessment,".

SECTION 7. Tennessee Code Annotated, Section 68-11-816, is amended by adding the following as a new subsection:

(d)(1) If a contested case is demanded after a nursing home is assessed a civil penalty, the health facilities commission shall file a notice of hearing under § 4-5-307 with the administrative procedures division of the office of the secretary of state within seven (7) working days of the nursing home's demand. All documents assessing civil penalties that have been appealed by the facility as a part of the contested case must be filed with the notice of hearing.

(2) The hearing must be conducted within thirty (30) calendar days of the health facilities commission's filing of a notice of hearing, unless otherwise agreed to by both parties.

SECTION 8. Tennessee Code Annotated, Section 68-11-817(b), is amended by deleting the subsection and substituting:

(b) The hearing must be conducted within thirty (30) calendar days of the health facilities commission's filing of a notice of hearing, unless otherwise agreed to by both parties. If an initial order is to be drafted by an administrative law judge sitting alone, the initial order must be issued within twenty (20) working days after the receipt of the trial transcript and proposed findings of fact and conclusions of law.

SECTION 9. Tennessee Code Annotated, Section 68-11-817, is amended by adding the following as a new subsection:

(c) Upon agreement of the nursing home and the commission, the challenge to a suspension of admission or civil penalty imposed by the commission may be submitted to a screening panel pursuant to § 68-11-208. The decision to participate in a screening panel does not affect another challenge filed by the nursing home under this part, or preclude the nursing home from filing such appeal if done timely under the relevant law.

SECTION 10. Tennessee Code Annotated, Section 68-11-813(b), is amended by deleting from subdivision (1) the language "three (3)" and substituting "five (5)", and deleting from subdivision (2) the language "eight (8)" and substituting "ten (10)".

SECTION 11. Tennessee Code Annotated, Section 68-11-813(c), is amended by deleting the subsection and substituting:

(c) If any nursing home exercises its right to a hearing in contest of both the assessment of a type A civil penalty and the suspension of admissions, then the matters must be consolidated for hearing before an administrative judge.

SECTION 12. Tennessee Code Annotated, Section 68-11-277(c), is amended by adding the following new subdivision:

(13) Promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 13. Tennessee Code Annotated, Section 68-11-1605, is amended by adding the following as a new subdivision:

(8) Direct the executive director to promulgate rules and policies for fulfillment of its duties and responsibilities under this part.

SECTION 14. Tennessee Code Annotated, Section 63-16-102(a), is amended by deleting the language "consist of eight (8) members" and substituting "consist of ten (10) members".

SECTION 15. Tennessee Code Annotated, Section 63-16-102(a), is amended by adding the following as new subdivisions:

(6) One (1) member shall be the executive director of the health facilities commission; and

(7) One (1) member shall be the commissioner of health, or the commissioner's designee, who shall serve as the executive officer of the board.

SECTION 16. Tennessee Code Annotated, Section 63-16-102(c), is amended by deleting the subsection.

SECTION 17. Tennessee Code Annotated, Section 68-57-101, is amended by deleting the section and substituting:

(a) An individual employed as a surgical technologist must meet one (1) or more of the following requirements:

(1) Successfully completed a nationally accredited surgical technology program, and holds and maintains certification as a surgical technologist from a national certifying body that certifies surgical technologists and is recognized by the health facilities commission;

(2)(A) Successfully completed an accredited surgical technologist program;

(B) Has not, as of the date of hire, obtained certification as a surgical technologist from a national certifying body that certifies surgical technologists and is recognized by the health facilities commission; and

(C) Obtains such certification no later than eighteen (18) months after completion of the program;

(3) Performed surgical technology services as a surgical technologist in a healthcare facility on or before May 21, 2007, and has been designated by the healthcare facility as being competent to perform surgical technology services based on prior experience or specialized training validated by competency in current practice. The healthcare facility employing or retaining such person as a surgical technologist under this subsection (a) obtains proof of such person's prior experience, specialized training, and current continuing competency as a surgical technologist and makes the proof available to the health facilities commission upon request of the commission; or

(4) Successfully completed a training program for surgical technology in the armed forces of the United States, the national guard, or the United States public health service.

(b) This section does not prohibit a person from performing surgical technology services if the person is acting within the scope of the person's license, certification, registration, permit, or designation, or is a student or intern under the direct supervision of a healthcare provider.

(c) A student who completed a surgical technology program that was in the process of becoming accredited on July 1, 2006, is considered a graduate of the accredited program.

(d) A person qualified to be employed as a surgical technologist pursuant to subsection (a) shall complete fifteen (15) hours of continuing education or contact hours annually to remain qualified for employment and shall submit verification of having completed such continuing education or contact hours requirements to the person's employer. The submission of current certification recognized by the health facilities commission satisfies the requirements of this subsection (d).

(e) This section and § 68-57-102 do not constitute a requirement to be assessed during an inspection under chapter 11, part 2 of this title.

(f)(1) The commission may promulgate rules, including emergency rules, to effectuate this section.

(2) In adopting rules pursuant to subdivision (f)(1), the commission may, in the commission's discretion, adopt in whole or in part by reference, nationally or regionally accredited surgical technology programs. The commission shall maintain a list of approved accredited surgical technology programs.

SECTION 18. Tennessee Code Annotated, Section 68-59-105, is amended by deleting the language "revenues deposited" wherever it appears and substituting "revenues and appropriations deposited".

SECTION 19. Tennessee Code Annotated, Title 68, Chapter 11, Part 2, is amended by adding the following as a new section:

Fees collected pursuant to § 68-11-202(c) must not revert to the general fund on any June 30, but must remain available for expenditure in subsequent fiscal years. These funds

may be expended for operating expenses of the commission as authorized in the annual appropriations act.

SECTION 20. Tennessee Code Annotated, Title 68, Chapter 11, Part 2, is amended by adding the following as a new section:

(a) The health facilities commission shall establish an independent informal dispute resolution (IIDR) program that conforms to the requirements of this section.

(b) If a nursing home is entitled to an informal dispute under 42 C.F.R. § 488.331 or 42 C.F.R. § 488.431, or pursuant to state law if cited for a licensure deficiency, then the nursing home may request an opportunity for IIDR.

(c) The IIDR program must contain, at a minimum, the following elements:

(1) The commission shall contract with an independent review organization to conduct the IIDR process for nursing homes; and

(2) Any independent review organization contracted with must:

(A) Have an understanding of medicare and medicaid program requirements;

(B) Have no conflict of interest; and

(C) Be acceptable to the federal centers for medicare and medicaid services (CMS) and meet the requirements of any federal rules regarding IIDR entities.

(d) The IIDR process must consist of the following steps:

(1) A statement of deficiencies issued by the commission that must include or be accompanied by notification of the availability of and an explanation of the IIDR process;

(2) Within ten (10) working days of the notification of civil monetary penalties imposed by CMS that will be placed in a CMS escrow account, or the notification of the imposition of any other remedy for which IIDR is provided under federal or state law or rule, the nursing home may request in writing an IIDR conference;

(3) The commission may only require that the nursing home's request:

(A) Be in writing and transmitted either by U.S. mail, common carrier, or by electronic means;

(B) Identify the deficiencies that are being contested through IIDR;

(C) Explain why the nursing home believes the deficiencies are not correctly cited;

(D) Identify any involved resident and that resident's representative, if any; and

(E) Explain the manner in which the nursing home wishes to conduct the IIDR conference, which is limited to the following options:

(i) A desk review of written information submitted by the nursing home;

(ii) A telephonic conference; or

(iii) An internet-facilitated meeting or videoconference, if the nursing home can facilitate the availability of technology for such meeting;

(4) Within five (5) working days of receipt of the written request for the IIDR process made by a nursing home, the commission shall refer the request to the independent review organization contracted with the commission;

(5) The commission shall acknowledge in writing to the nursing home that the request for independent review has been received and forwarded to the independent review organization for review. The notice must include the name, address, and contact information of the independent review organization;

(6) The nursing home may submit any additional nursing home records, information, exhibits, or other documentation to support its argument without a page limitation. All documentation must be received by the independent review organization no later than two (2) working days prior to the IIDR conference, and may be transmitted in electronic format;

(7) The independent review organization shall hold an IIDR conference no later than fifteen (15) working days after receipt of the written request for the IIDR process made by a nursing home, unless the nursing home requests additional time to schedule the conference;

(8) If the independent review organization determines the need for additional information, clarification, or discussion after conclusion of the IIDR conference, then the nursing home shall present the requested information as soon as possible, but no later than five (5) working days of receipt of the request;

(9) Within ten (10) calendar days of the IIDR conference, the independent review organization shall provide and make an IIDR recommendation, based upon the facts and information presented, and shall transmit a written decision to the commission;

(10) If additional information was requested and submitted after conclusion of the IIDR conference, the independent review organization has an additional five (5) calendar days to make a determination; and

(11) The IIDR recommendation must include, at a minimum:

(A) A list of each disputed deficiency or survey finding;

(B) A summary of the IIDR recommendation for each deficiency or finding and the rationale for the recommendation;

(C) Any documents submitted by the nursing home; and

(D) Any comments submitted.

(e) The commission shall provide a final decision to the facility as soon as practicable, but no later than ten (10) calendar days after its receipt of the written record. The final IIDR decision to the facility must contain the result for each deficiency challenged and a brief summary of the rationale for that result.

(f) If the independent review organization or the commission upon review of a written decision, determines that the original statement of deficiencies should be changed as a result of the IIDR process, then the commission shall transmit a revised statement of deficiencies to the nursing home within ten (10) calendar days of the independent review organization's determination. The nursing home shall have an additional ten (10) calendar days from the receipt of the revised statement of deficiencies to submit a revised plan to correct any remaining deficiencies.

(g) Use of the IIDR process by a nursing home does not waive the nursing home's right to any formal hearing or other appeal process afforded by law or rule. The IIDR is not a formal evidentiary proceeding.

(h) No later than December 1st of each year, the commission shall submit a report on the IIDR process to the chair of the health and welfare committee of the senate, the health committee of the house of representatives, and the legislative librarian, and publish the report on its website in a manner accessible to the public. The report must contain, at a minimum:

(1) The number of IIDR conferences requested and conducted;

(2) The number of deficiencies contested through the IIDR process;

(3) The number of deficiencies sustained in IIDR conferences;

- (4) The number of deficiencies overturned in IIDR conferences;
- (5) The number of deficiencies modified or changed in IIDR conferences; and
- (6) To the extent possible, the number of civil monetary penalties reduced by IIDR results where the facility overturned one or more deficiencies.

SECTION 21. Tennessee Code Annotated, Title 68, Chapter 11, Part 2, is amended by adding the following as a new section:

(a) The executive director shall establish and maintain an assisted-care living facility trust fund known as the ACLF quality improvement fund. The ACLF quality improvement fund must be created by the deposit of all civil monetary penalties collected from assisted-care living facilities under this part. Funds deposited in the ACLF quality improvement fund must be used solely for the support of assisted-care living facility residents.

(b)(1) The ACLF quality improvement fund is administered by a panel of at least seven (7) and no more than eleven (11) individuals.

(2) At least seventy-five percent (75%) of the panel must be employees of an assisted-care living facility or an entity affiliated with an assisted-care living facility.

(3) The executive director shall select and nominate individuals for the panel in consultation with the Tennessee center for assisted living, LeadingAge Tennessee, and Argentum.

(4) Panel members nominated by the executive director must be ratified by the health facilities commission at the next scheduled commission meeting.

(c) The executive director and the panel shall jointly create a formal process to allow licensed assisted-care living facilities and providers of services to assisted-care living facility residents to apply for funds from the ACLF quality improvement fund for one-time projects designed to improve care to residents of such facilities.

(d) A project recommended for funding by the panel must be approved by the health facilities commission at the next scheduled commission meeting.

(e)(1) The executive director shall establish and maintain an ACLF resident protection fund.

(2) The ACLF resident protection fund must be maintained for the purpose of protecting the residents of an assisted-care living facility whose noncompliance with the conditions of continued licensure, applicable state rules, and contractual standards threatens the residents' continuous care, the residents' property, the assisted-care living facility's continued operation, or the assisted-care living facility's continued participation in the medical assistance program compiled in title 71, chapter 5, part 1.

(3) In addition to any other lawful use of the ACLF resident protection fund, the ACLF resident protection fund may also be used for making payments for temporary management for assisted-care living facilities.

(4) The ACLF resident protection fund established by this subsection (e) must be funded by depositing twenty-five percent (25%) of each penalty collected from assisted-care living facilities and individuals under this part until the balance of the ACLF resident protection fund reaches seventy-five thousand dollars (\$75,000).

(5) Any penalties collected while the balance of the ACLF resident protection fund is seventy-five thousand dollars (\$75,000) or more must be deposited to the ACLF quality improvement fund established by subsection (a).

(f) Notwithstanding another law to the contrary, any funds in either the ACLF quality improvement fund or the ACLF resident protection fund remaining unspent at the end of the fiscal year must be carried over into the budget of the health facilities commission for the subsequent fiscal year, and must continue to be carried over from year to year until expended for the purposes prescribed in this section.

(g) The health facilities commission shall deposit any civil monetary penalties held by the commission on the effective date of this act into the ACLF quality improvement fund or the ACLF resident protection fund consistent with this section.

SECTION 22. Tennessee Code Annotated, Section 68-11-1620, is amended by deleting subsections (a) and (b) and substituting:

(a) Fees and civil penalties authorized by the certificate of need program established by this part must be paid by the health facilities commission or the collecting agency to the state treasurer and deposited in the state general fund and credited to a separate account for the commission's expenses incurred administering the implementation and enforcement of the certificate of need laws and in the operation of the commission. Fees include, but are not limited to, fees for the application of certificates of need, subscriptions, project cost overruns, copying, and contested cases. Disbursements from that account may only be made for the purpose of defraying expenses incurred in the implementation and enforcement of the certificate of need program established by this part by the commission and in the operation of the commission. Funds remaining in the account at the end of a fiscal year do not revert to the general fund but remain available for expenditure in accordance with law. All funds previously collected by the commission and held in the reserve established by this part are also available to the commission pursuant to this section.

(b) The commission shall prescribe fees by rule as authorized by the certificate of need program established by this part. The fees must be in an amount that, in addition to the fees prescribed in subsection (c), provides for the cost of administering the implementation and enforcement of the certificate of need program established by this part by the commission.

SECTION 23. Tennessee Code Annotated, Title 68, Chapter 11, Part 2, is amended by adding the following as a new section:

The attorney general and reporter, either on the attorney general and reporter's own initiative or upon request of the health facilities commission or executive director, may petition a court for appointment of a receiver for a facility. The petition must be filed in the chancery court of the county where the facility is located. The court shall hold a hearing on the petition within five (5) days of the filing of the petition and determine the matter within fifteen (15) days of the initial hearing. The petition and notice of the hearing must be served on the operator or administrator of the facility or, if personal service is impossible, must be posted in a conspicuous place in the facility not later than three (3) days before the time specified for the hearing, unless a different period is fixed by order of the court.

SECTION 24. Tennessee Code Annotated, Title 68, Chapter 59, Part 1, is amended by adding the following as a new section:

(a) The executive director has appointing authority of the advisory council.

(b) One (1) member of the advisory council must be a member of the committee on pediatric emergency care.

SECTION 25. Tennessee Code Annotated, Title 68, Chapter 11, Part 2, is amended by adding the following as a new section:

(a) As used in this section:

(1) "CMS" means the federal centers for medicare and medicaid services;

(2) "Long-term care facility" means a nursing facility that is certified under Title XVIII or Title XIX of the Social Security Act (42 U.S.C. § 1395 et seq. and 42 U.S.C. § 1396 et seq.); and

(3) "Long-term care provider association" means the Tennessee Health Care Association, Tennessee Center for Assisted Living, LeadingAge Tennessee, and Argentum.

(b) The health facilities commission shall provide training for surveyors and investigators who perform duties related to nursing facilities in this title.

(c) The commission and representatives of long-term care provider associations shall evaluate and discuss opportunities for joint training no less than annually or upon the release of any new regulatory guideline, regulation, interpretation, program letter, or memorandum, or other new materials used in surveyor training. Discussions must include training of long-term care providers and health facilities commission survey inspectors and must be conducted jointly on the commission's new expectations and the use of subject matter experts in the field to develop or make available training resources on current standards of practice and the use of technology.

(d) The commission shall invite representatives of long-term care provider associations to participate in the planning process for any joint surveyor and provider training session, which may be held in person or remotely, and as often as necessary.

(e)(1) The commission may seek approval from CMS to utilize money from the Civil Money Penalty Reinvestment Program to cover the costs of joint training for surveyors and staff of long-term care facilities.

(2) If CMS denies the commission's application for funding to cover the cost of an in-person training session, then the commission and the long-term care provider associations shall share in the cost of providing the training.

(3) If the training is approved by the commission, then this section does not prohibit a long-term care provider association from offering joint training to its membership and surveyors.

SECTION 26. Tennessee Code Annotated, Section 68-11-251(a), is amended by deleting the subsection and substituting:

(a) The health facilities commission shall promulgate rules pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to provide optimal emergency medical, surgical, and critical care services for pediatric patients in facilities it licenses and has the authority, when funding is available, to obtain assistance with development and implementation of its standards and to support delivery of educational services and equipment to providers of emergency pediatric medical services in facilities it licenses. In developing, updating, and implementing rules and providing services and equipment, the commission shall use national standards as a guide and shall collaborate with the emergency medical services division and its board and shall collaborate with and consider recommendations by the committee on pediatric emergency care created pursuant to subsection (e).

SECTION 27. Tennessee Code Annotated, Section 68-11-251(e)(1), is amended by deleting the first sentence and substituting:

The committee on pediatric emergency care must be operated by a 501(c)(3) organization, as defined in 26 U.S.C. § 501(c)(3), that includes the Tennessee EMS for children state partnership program director and program manager and representatives of the following organizations:

SECTION 28. Tennessee Code Annotated, Section 68-11-251(e)(1)(M), is amended by deleting the subdivision and substituting:

(M) Other persons or representatives of such other organizations, groups, or entities that a majority of committee members agrees are necessary to accomplish its mission.

SECTION 29. Tennessee Code Annotated, Section 68-11-203(e)(4), is amended by deleting the subdivision and substituting:

(4)(A) An action of the commission is not effective unless the action is concurred in by a majority of commission members present and voting.

(B)(i) For purposes of contested case hearings and disciplinary matters other than a suspension or revocation, five (5) or more members constitute a quorum, and the commission chairperson is authorized, when it is deemed necessary, to split the commission into panels of five (5) or more members each to conduct contested case hearings or disciplinary matters. A majority vote of the members present on a duly constituted disciplinary panel is required to authorize commission action in disciplinary matters and contested case hearings.

(ii) Any matter where summary suspension of a license is sought must be heard by a panel of seven (7) or more members. A majority vote of the members present is required to authorize the summary suspension of a license.

(iii) A license revocation must be heard by a majority of appointed members of the commission, not including vacant positions. A majority vote of the members present is required to authorize the revocation of a license.

(iv) The decision of a disciplinary panel is a final order.

(v) Either party to a contested case hearing or disciplinary matter heard by a disciplinary panel may appeal the panel's decision consistent with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(vi) A disciplinary panel may be convened electronically, in accordance with § 8-44-108.

SECTION 30. Tennessee Code Annotated, Section 68-11-201(35), is amended by deleting the subdivision.

SECTION 31. Tennessee Code Annotated, Section 68-11-203(a), is amended by deleting the language ", which must include a needs assessment".

SECTION 32. Tennessee Code Annotated, Section 68-11-1602(15), is amended by deleting the subdivision.

SECTION 33. Tennessee Code Annotated, Section 68-11-1605(3), is amended by deleting the language ", including a needs assessment that must be updated at least annually".

SECTION 34. Tennessee Code Annotated, Section 68-11-216(b)(2), is amended by deleting the subdivision.

SECTION 35. For the purpose of promulgating rules, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes:

- (1) Section 17 takes effect upon becoming a law, the public welfare requiring it;
- (2) Sections 2 and 26-34 of this act take effect at 12:01 a.m. on July 1, 2024, the public welfare requiring it; and
- (3) The remaining sections of this act take effect July 1, 2024, the public welfare requiring it.

SENATE BILL NO. 2022

PASSED: April 22, 2024



RANDY McNALLY
SPEAKER OF THE SENATE



CAMERON SEXTON, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 6th day of May 2024



BILL LEE, GOVERNOR