

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 56th Legislature (2018)

4 HOUSE BILL 3230

 By: Moore

7 AS INTRODUCED

8 An Act relating to public health and safety; defining
9 certain terms; prohibiting operation of certain
10 facility without certain license; providing certain
11 exceptions; setting requirements for certain
12 application; requiring State Commissioner of Health
13 to adopt certain rules; requiring certain facility to
14 provide examination for determination of emergency
15 medical condition; permitting State Department of
16 Health to take certain action for certain violations;
17 authorizing emergency suspension and petition for
18 temporary restraining order; creating certain
19 penalties; permitting for judicial review of certain
20 order; providing for codification; and providing an
21 effective date.

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

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

26 As defined in this act:

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

28 2. "Emergency care" means health care services provided to
29 achieve stabilization as needed for conditions that reasonably

1 appear to constitute a life- or limb-threatening emergency based on
2 the presenting symptoms of the patient;

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

4 4. "Facility" means a freestanding emergency medical care
5 facility; and

6 5. "Freestanding emergency medical care facility" means a
7 facility, structurally separate and distinct from a hospital that
8 receives an individual and provides emergency care as defined by
9 paragraph 2 of this section or nonemergent care, which means all
10 health care that is not life threatening or covered as emergency
11 care under an existing health care policy.

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

15 A. Except as provided by Section 3 of this act, a person may
16 not establish or operate a freestanding emergency medical care
17 facility in this state without a license issued under this act.

18 B. Except as provided by Section 3 of this act, a facility or
19 person may not hold itself out to the public as a freestanding
20 emergency medical care facility or use any similar term, as defined
21 by Department rule, that would give the impression that the facility
22 or person is providing emergency care unless the facility or person
23 holds a license issued under this act. The use of the term
24

1 "emergency" or a similar term is also subject to Section 3 of this
2 act.

3 C. Nothing in this act shall be interpreted to prohibit a
4 licensed freestanding emergency care facility from providing other
5 health care services, including but not limited to, imaging, primary
6 care, nonemergent care and other ancillary services.

7 D. Each separate facility location must have a separate
8 license.

9 E. A license issued under this act is not transferable or
10 assignable.

11 F. The Commissioner by rule shall establish a classification
12 for a facility that is in continuous operation twenty-four (24)
13 hours per day and seven (7) days per week.

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

17 The following facilities are not required to be licensed under
18 this act:

19 1. An office or clinic owned and operated by a manufacturing
20 facility solely for the purposes of treating its employees and
21 contractors;

22 2. Temporary emergency clinics in disaster areas;

23 3. An office or clinic of a licensed dentist, optometrist or
24 podiatrist;

1 4. A licensed nursing home;

2 5. A licensed hospital;

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

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

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

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

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

15 9. A licensed ambulatory surgical center.

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

19 A. An applicant for a license under this act shall submit an
20 application to the Department on a form prescribed by the
21 Department.

22 B. Each application must be accompanied by a nonrefundable
23 license fee in an amount set by the Commissioner.

1 C. The application must contain evidence that there is at least
2 one physician and one nurse on the staff of the facility who are
3 licensed by the appropriate state licensing board.

4 D. The application must contain evidence that the facility
5 meets the minimum standards and requirements specified in Section 9
6 of this act.

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

11 F. The license fee shall be paid annually on renewal of the
12 license.

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

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

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

22 The Commissioner shall set fees imposed by this act in amounts
23 reasonable and necessary to defray the cost of administering this
24 act.

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 Department may inspect a facility at reasonable times as
5 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 Freestanding Emergency Medical
11 Care Facility Licensing Fund and may be appropriated to the
12 Department only to administer and enforce this act.

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

16 A. The Commissioner shall adopt rules necessary to implement
17 this act, including minimum standards for:

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

21 2. The number, qualifications and organization of the
22 professional staff and other personnel;

23 3. The administration of the facility;

24

1 4. The equipment essential to the health and welfare of the
2 patients;

3 5. The sanitary and hygienic conditions within the facility and
4 its surroundings;

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

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

8 8. The provision of laboratory and radiological services;

9 9. The distribution and administration of drugs and controlled
10 substances;

11 10. A quality assurance program for patient care;

12 11. 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 (25) percent 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 Oklahoma Board of Medical Licensure
24 and Supervision who have a financial interest in the

1 facility or any entity which has an ownership interest
2 in the facility;

3 12. Transfer protocols for patients requiring advanced medical
4 care at a hospital; and

5 13. Any other aspect of the operation of a facility that the
6 Commissioner considers necessary to protect the facility's patients
7 and the public.

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

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

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

21 B. Before a facility accepts any patient for treatment or
22 diagnosis, the facility shall enter into a referral, transmission or
23 admission agreement with a hospital licensed in this state.

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

4 A person may file a complaint with the Department against a
5 facility licensed under this act.

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

9 A. The Department may deny, suspend or revoke a license for a
10 violation of this act or a rule adopted under this act.

11 B. If the Department finds that a facility is in repeated
12 noncompliance with this act or rules adopted under this act but the
13 noncompliance does not endanger public health and safety, the
14 Department may schedule the facility for probation rather than
15 suspending or revoking the facility's license. The Department shall
16 provide notice to the facility of the probation and of the items of
17 noncompliance not later than the 10th day before the date the
18 probation period begins. The Department shall designate a period of
19 not less than thirty (30) days during which the facility remains
20 under probation. During the probation period, the facility must
21 correct the items that were in noncompliance and report the
22 corrections to the Department for approval.

23 C. The Department may suspend or revoke the license of a
24 facility that does not correct items that were in noncompliance or

1 that does not comply with this act or the rules adopted under this
2 act within the applicable probation period.

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

6 A. The Department may issue an emergency order to suspend a
7 license issued under this act if the Department has reasonable cause
8 to believe that the conduct of a license holder creates an immediate
9 danger to the public health and safety.

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

12 C. On written request of the license holder, the Department
13 shall conduct a hearing not earlier than the 10th day or later than
14 the 30th day after the date the hearing request is received to
15 determine if the emergency suspension is to be continued, modified
16 or rescinded.

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

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

22 A. The Department may petition a district court for a temporary
23 restraining order to restrain a continuing violation of the
24 standards or licensing requirements provided under this act if the

1 Department finds that the violation creates an immediate threat to
2 the health and safety of the patients of a facility.

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

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

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

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

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

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

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

18 A. A person commits an offense if the person violates Section 2
19 of this act.

20 B. An offense under this section is a misdemeanor.

21 C. Each day of a continuing violation constitutes a separate
22 offense.

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

A. The Department may impose an administrative penalty on a person licensed under this chapter who violates this act or a rule or order adopted under this act. A penalty collected under this section or Section 17 of this act shall be deposited in the State Treasury in the General Revenue Fund.

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

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

D. The amount shall be based on:

1. The seriousness of the violation, including the nature, circumstances, extent and gravity of the violation;
2. The threat to health or safety caused by the violation;
3. The history of previous violations;
4. The amount necessary to deter a future violation;

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

4 6. Any other matter that justice may require.

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

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

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

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

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

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

16 1. Accept the determination and recommended penalty of the
17 Department; or

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

20 H. If the person accepts the determination and recommended
21 penalty or if the person fails to respond to the notice, the
22 Commissioner by order shall approve the determination and impose the
23 recommended penalty.

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

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

6 A. Within thirty (30) days after the date an order of the
7 Commissioner that imposes an administrative penalty becomes final,
8 the person shall:

9 1. Pay the penalty; or

10 2. File a petition for judicial review of the Commissioner's
11 order contesting the occurrence of the violation, the amount of the
12 penalty, or both.

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

15 1. Stay enforcement of the penalty:

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

18 b. by giving the court a supersedeas bond approved by the
19 court that:

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

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

23 2. Request the court to stay enforcement of the penalty by
24 filing with the court a sworn affidavit of the person stating that

1 the person is financially unable to pay the penalty and is
2 financially unable to give the supersedeas bond and by sending a
3 copy of the affidavit to the Commissioner by certified mail.

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

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

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

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

21 G. If the person paid the penalty and if the amount of the
22 penalty is reduced or the penalty is not upheld by the court, the
23 court shall order, when the court's judgment becomes final, that the
24 appropriate amount plus accrued interest be remitted to the person

1 within thirty (30) days after the date that the judgment of the
2 court becomes final. The interest accrues at the rate charged on
3 loans to depository institutions by the Federal Reserve Bank of New
4 York. The interest shall be paid for the period beginning on the
5 date the penalty is paid and ending on the date the penalty is
6 remitted.

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

13 SECTION 18. This act shall become effective November 1, 2018.

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15 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC HEALTH, dated 02/06/2018 -
16 DO PASS.

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