

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

SENATE BILL NO. 68

By: Pemberton

AS INTRODUCED

An Act relating to freestanding emergency medical care facilities; defining certain terms; prohibiting operation of certain facility without certain license; providing certain interpretation; requiring separate license for each location; prohibiting transfer or assignment of certain license; requiring the establishment of certain classification; providing certain exceptions; setting requirements for certain application; requiring licensing fee; requiring State Commissioner of Health to adopt certain rules and set certain fees; authorizing facility inspections; requiring licensing fees to be deposited in certain revolving fund; requiring State Commissioner of Health to adopt certain rules; requiring certain consultation; requiring certain facility to provide examination for determination of emergency medical condition; requiring certain agreement; 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; creating certain 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 order; creating revolving fund; providing for codification; and providing an effective date.

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

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

5 As defined in this act:

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

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

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

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

14 5. "Freestanding emergency medical care facility" means a  
15 facility, structurally separate and distinct from a hospital that  
16 receives an individual and provides emergency care as defined by  
17 paragraph 2 of this section or nonemergent care, which means all  
18 health care that is not life threatening or covered as emergency  
19 care under an existing health care policy.

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

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

4       B. Except as provided by Section 3 of this act, a facility or  
5 person may not hold itself out to the public as a freestanding  
6 emergency medical care facility or use any similar term, as defined  
7 by State Department of Health rule, that would give the impression  
8 that the facility or person is providing emergency care unless the  
9 facility or person holds a license issued under this act. The use  
10 of the term "emergency" or a similar term is also subject to Section  
11 3 of this act.

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

16       D. Each separate facility location must have a separate  
17 license.

18       E. A license issued under this act is not transferable or  
19 assignable.

20       F. The State Commissioner of Health by rule shall establish a  
21 classification for a facility that is in continuous operation  
22 twenty-four (24) hours per day and seven (7) days per week.  
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SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2669 of Title 63, unless there is created a duplication in numbering, reads as follows:

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

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

2. Temporary emergency clinics in disaster areas;

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

4. A licensed nursing home;

5. A licensed hospital;

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

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

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

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

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

3       9.   A licensed ambulatory surgical center.

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

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

10      B.   Each application must be accompanied by a nonrefundable  
11   license fee in an amount set by the State Commissioner of Health.

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

15      D.   The application must contain evidence that the facility  
16   meets the minimum standards and requirements specified in Section 9  
17   of this act.

18      E.   The Department shall issue a license if, after inspection  
19   and investigation, it finds that the applicant and the facility meet  
20   the requirements of this act and the standards adopted under this  
21   act.

22      F.   The license fee shall be paid annually on renewal of the  
23   license.

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

4       The State Commissioner of Health shall adopt rules necessary to  
5 implement this act, including requirements for the issuance,  
6 renewal, denial, suspension and revocation of a license to operate a  
7 facility.

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

11       The State Commissioner of Health shall set fees imposed by this  
12 act in amounts reasonable and necessary to defray the cost of  
13 administering this act.

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

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

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

22       All fees collected under this act shall be deposited in the  
23 State Treasury to the credit of the Freestanding Emergency Medical  
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Care Facility Licensing Revolving Fund and may be used only to administer and enforce this act.

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

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

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

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

3. The administration of the facility;

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

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

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

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

8. The provision of laboratory and radiological services;

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

10. A quality assurance program for patient care;

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

- 2 a. the name and Social Security number of the sole  
3 proprietor, if the facility is a sole proprietor,  
4 b. the name and Social Security number of each general  
5 partner who is an individual, if the facility is a  
6 partnership,  
7 c. the name and Social Security number of any individual  
8 who has an ownership interest of more than twenty-five  
9 (25) percent in the corporation, if the facility is a  
10 corporation, and  
11 d. the names and license numbers of any physicians  
12 licensed by the State Board of Medical Licensure and  
13 Supervision or the State Board of Osteopathic  
14 Examiners who have a financial interest in the  
15 facility or any entity which has an ownership interest  
16 in the facility;

17 12. Transfer protocols for patients requiring advanced medical  
18 care at a hospital; and

19 13. Any other aspect of the operation of a facility that the  
20 Commissioner considers necessary to protect the facility's patients  
21 and the public.

22 B. In adopting the rules required under subsection A of this  
23 section concerning transfer protocols, the Commissioner shall  
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1 consult with physicians who provide emergency care and medical  
2 consultant organizations.

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

6 A. A facility shall provide to each facility patient, without  
7 regard to the individual's ability to pay, an appropriate medical  
8 screening, examination and stabilization within the facility's  
9 capability including ancillary services routinely available to the  
10 facility, to determine whether an emergency medical condition exists  
11 and to determine any necessary stabilizing treatment.

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

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

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

20 SECTION 12. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 2678 of Title 63, unless there  
22 is created a duplication in numbering, reads as follows:  
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1       A. The State Department of Health may deny, suspend or revoke a  
2 license for a violation of this act or a rule adopted under this  
3 act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11        A. A person commits an offense if the person violates Section 2  
12 of this act.

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

14        C. Each day of a continuing violation constitutes a separate  
15 offense.

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

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

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

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

9 D. The amount shall be based on:

10 1. The seriousness of the violation, including the nature,  
11 circumstances, extent and gravity of the violation;

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

13 3. The history of previous violations;

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

15 5. Whether the violator demonstrated good faith, including when  
16 applicable whether the violator made good faith efforts to correct  
17 the violation; and

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

19 E. If the Department initially determines that a violation  
20 occurred, the Department shall give written notice of the report by  
21 certified mail to the person.

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

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

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

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

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

6            1. Accept the determination and recommended penalty of the  
7 Department; or

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

10        H. If the person accepts the determination and recommended  
11 penalty or if the person fails to respond to the notice, the  
12 Commissioner by order shall approve the determination and impose the  
13 recommended penalty.

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

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

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

22            1. Pay the penalty; or  
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24  
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1       2. File a petition for judicial review of the Commissioner's  
2 order contesting the occurrence of the violation, the amount of the  
3 penalty, or both.

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

6       1. Stay enforcement of the penalty:

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

9           b. by giving the court a supersedeas bond approved by the  
10 court that:

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

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

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

19       C. If the Commissioner receives a copy of an affidavit under  
20 subsection B of this section, the Commissioner may file with the  
21 court, within five (5) calendar days after the date the copy is  
22 received, a contest to the affidavit. The court shall hold a  
23 hearing on the facts alleged in the affidavit as soon as practicable  
24 and shall stay the enforcement of the penalty on finding that the

1 alleged facts are true. The person who files an affidavit has the  
2 burden of proving that the person is financially unable to pay the  
3 penalty or to give a supersedeas bond.

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

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

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

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

22 H. If the person gave a supersedeas bond and the penalty is not  
23 upheld by the court, the court shall order, when the court's  
24 judgment becomes final, the release of the bond. If the person gave



1 a supersedeas bond and the amount of the penalty is reduced, the  
2 court shall order the release of the bond after the person pays the  
3 reduced amount.

4 SECTION 18. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 2684 of Title 63, unless there  
6 is created a duplication in numbering, reads as follows:

7 There is hereby created in the State Treasury a revolving fund  
8 for the State Department of Health to be designated the  
9 "Freestanding Emergency Medical Care Facility Licensing Revolving  
10 Fund". The fund shall be a continuing fund, not subject to fiscal  
11 year limitations, and shall consist of all monies received by the  
12 State Department of Health from freestanding emergency medical care  
13 facility licensing fees. All monies accruing to the credit of the  
14 fund are hereby appropriated and may be budgeted and expended by the  
15 State Department of Health for the purpose of administering and  
16 enforcing licensing provisions for freestanding emergency medical  
17 care facilities. Expenditures from the fund shall be made upon  
18 warrants issued by the State Treasurer against claims filed as  
19 prescribed by law with the Director of the Office of Management and  
20 Enterprise Services for approval and payment.

21 SECTION 19. This act shall become effective November 1, 2019.  
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