

2016 Regular Session

SENATE BILL NO. 465

BY SENATOR BARROW

HEALTH SERVICES. Provides relative to freestanding emergency medical care facilities.
(8/1/16)

1 AN ACT

2 To enact Part V of Chapter 11 of Title 40 of the Louisiana Revised Statutes of 1950, to be
3 comprised of R.S. 40:2162.1 through 2162.15, relative to the regulation of
4 freestanding emergency medical care facilities; to provide for a short title; to
5 establish the purpose of the freestanding emergency medical facilities law; to provide
6 for definitions; to provide for the licensure of freestanding emergency medical
7 facilities; to establish minimum standards; to provide for an administrative fee; and
8 to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Part V of Chapter 11 of Title 40 of the Louisiana Revised Statutes of
11 1950, comprised of R.S. 40:2162.1 through 2162.15, is hereby enacted to read as follow:

12 **PART V. FREESTANDING EMERGENCY MEDICAL CARE FACILITIES**

13 **§2162.1. Short title**

14 **This Part may be cited as the "Freestanding Emergency Medical Care**
15 **Facilities Law".**

16 **§2162.2. Purpose**

17 **The purpose this Part is to authorize the Department of Health and**
18 **Hospitals to promulgate and publish rules and regulations to provide for**

1 healthcare access to citizens in rural and underserved areas as hospitals in these
2 locations close. It is the intent of the legislature to support the healthcare and
3 access needs in rural, underserved or low-income communities.

4 §2162.3. Definitions

5 As used in this Part:

6 (1) "Department" shall mean the Department of Health and Hospitals.

7 (2) "Emergency care" shall have the same meaning as set forth in R.S.
8 22:1821.

9 (3) "Secretary" shall mean the secretary of the Department of Health
10 and Hospitals.

11 (4) "Facility" shall mean a freestanding emergency medical care facility.

12 (5) "Freestanding emergency medical care facility" shall mean a facility,
13 structurally separate and distinct from a hospital that receives an individual
14 and provides emergency care, as defined by Paragraph (2) of this Subsection.

15 §2162.4. License required

16 A.(1) Notwithstanding the provisions of R.S. 40:2162.5, a person shall
17 not establish or operate a freestanding emergency medical care facility in this
18 state without a license issued pursuant to this Part.

19 (2) Each separate facility location shall have a separate license.

20 (3) A license issued under this Chapter is not transferable or assignable.

21 B. Notwithstanding the provisions of R.S. 40:2162.5, a facility or person
22 shall not hold itself out to the public as a freestanding emergency medical care
23 facility or use any similar term, as defined by department rule, that would give
24 the impression that the facility or person is providing emergency care unless the
25 facility or person holds a license issued pursuant to this Part. The use of the
26 term "emergency" or a similar term is also subject to R.S. 40:2162.9.

27 C.(1) The secretary by rule shall establish a classification for a facility
28 that is in continuous operation twenty-four hours per day and seven days per
29 week and a classification for a facility that is in operation seven days per week
30 and at least twelve hours per day.

1 **(2) A facility that is not in continuous operation twenty-four hours per**
2 **day and seven days per week cannot be issued a license with a term that extends**
3 **beyond January 1, 2018.**

4 **§2162.5. Exemptions**

5 **The following facilities are not required to be licensed pursuant to this**
6 **Part:**

7 **(1) An office or clinic owned and operated by a manufacturing facility**
8 **solely for the purposes of treating its employees and contractors.**

9 **(2) Temporary emergency clinics in disaster areas.**

10 **(3) An office or clinic of a licensed physician, dentist, optometrist, or**
11 **podiatrist.**

12 **(4) A licensed nursing home.**

13 **(5) A licensed hospital.**

14 **(6) A hospital that is owned and operated by this state.**

15 **(7) A facility located within or connected to a hospital described by**
16 **Paragraph (5) or (6) of this Section.**

17 **(8) A facility that is owned or operated by a hospital described by**
18 **Paragraph (5) or (6) Section and is either:**

19 **(a) Surveyed as a service of the hospital by an organization that has been**
20 **granted deeming authority as a national accreditation program for hospitals by**
21 **the Centers for Medicare and Medicaid Services.**

22 **(b) Granted provider-based status by the Centers for Medicare and**
23 **Medicaid Services.**

24 **(9) A licensed ambulatory surgical center.**

25 **§2162.6. License application and issuance**

26 **A. An applicant for a licensure pursuant to this Part shall submit an**
27 **application to the department on a form prescribed by the department. Each**
28 **application shall include the following:**

29 **(1) A nonrefundable license fee in an amount set by the secretary.**

30 **(2) Evidence that there is at least one physician and one nurse on the**

1 staff of the facility who are licensed by the appropriate state licensing board.

2 (3) Evidence that the facility meets the minimum standards and
3 requirements specified in R.S. 40:2162.7.

4 B. The department shall issue a license if, after inspection and
5 investigation, it finds that the applicant and the facility meet the requirements
6 of this Part and the standards adopted pursuant to this Part.

7 C. The license fee must be paid annually on renewal of the license.

8 D. The secretary shall establish fees imposed by this Chapter in amounts
9 reasonable and necessary to defray the cost of administering this Part.

10 E. The department may inspect a facility at reasonable times as
11 necessary to ensure compliance with this Part.

12 F. The department shall adopt rules, as necessary, in accordance with
13 the Administrative Procedure Act to implement the provisions of this Part,
14 including requirements for the issuance, renewal, denial, suspension, and
15 revocation of a license to operate a freestanding emergency medical care
16 facility.

17 §2162.7. Minimum Standards

18 A. The department shall adopt rules necessary to implement this Part,
19 including minimum standards for:

20 (1) The construction and design of the facility, including plumbing,
21 heating, lighting, ventilation, and other design standards necessary to ensure the
22 health and safety of patients.

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

25 (3) The administration of the facility.

26 (4) The equipment essential to the health and welfare of the patients.

27 (5) The sanitary and hygienic conditions within the facility and its
28 surroundings.

29 (6) The requirements for the contents, maintenance, and release of
30 medical records.

1 **(7) The minimal level of care and standards for denial of care services.**

2 **(8) The provision of laboratory and radiological services.**

3 **(9) The distribution and administration of drugs and controlled**
4 **substances.**

5 **(10) A quality assurance program for patient care.**

6 **(11) Disclosure, if applicable, of the following:**

7 **(a) The name and social security number of the sole proprietor, if the**
8 **facility is a sole proprietor.**

9 **(b) The name and social security number of each general partner who**
10 **is an individual, if the facility is a partnership.**

11 **(c) The name and social security number of any individual who has an**
12 **ownership interest of more than twenty-five percent in the corporation, if the**
13 **facility is a corporation.**

14 **(d) The name and license numbers of any physicians licensed by the**
15 **Louisiana State Board of Medical Examiners who have a financial interest in**
16 **the facility or any entity which has an ownership interest in the facility.**

17 **(12) Transfer protocols for patients requiring advanced medical care at**
18 **a hospital.**

19 **(13) Any other aspect of the operation of a facility that the secretary**
20 **considers necessary to protect the facility's patients and the public.**

21 **B. In adopting the rules required under Paragraph (A)(12) of this**
22 **Section concerning transfer protocols, the secretary shall consult with**
23 **physicians who provide emergency care, medical consultant organizations, and**
24 **organizations representing hospitals licensed in this state.**

25 **C. The minimum standards provided in this Section shall apply to**
26 **facilities operating twenty-four hours a day and seven days per week and**
27 **facilities operating less than twenty-four hours a day and seven days per week.**

28 **§2162.8. Freestanding Emergency Medical Care Facility Licensing Fund**

29 **All fees collected pursuant to this Part shall be deposited in the state**
30 **treasury to the credit of the Freestanding Emergency Medical Care Facility**

1 Licensing Fund and may be appropriated to the department solely for the
2 administration and enforcement of this Part.

3 §2162.9. Facilities not in continuous operation

4 A. A facility that is not in continuous operation shall display a clearly
5 visible sign that does the following:

6 (1) Indicates whether the facility is open or closed.

7 (2) Provides information regarding the facility's operating hours.

8 (3) Provides clear instructions directing a patient to an emergency room
9 in a licensed hospital or a freestanding emergency room classified as a facility
10 that is in continuous operation within ten miles of the facility that is not in
11 continuous operation.

12 B. A facility that is not in continuous operation may not advertise,
13 market, or otherwise promote the services provided by the facility using the
14 term "emergency" or any similar term defined by department rule.

15 C. Notwithstanding the provisions of Subsection B of this Section, a
16 facility that is not in continuous operation is not required to comply with the
17 provisions of Subsection B of this Section until the earlier of the second
18 anniversary of the date the facility is issued a license pursuant to this Part or
19 September 1, 2012.

20 §2162.10. Facility care requirements; complaints

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

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

29 C. A person may file a complaint with the department against a facility
30 licensed pursuant to this Part.

1 **§2162.11. Denial, suspension, probation, or revocation of license; emergency**
2 **suspension**

3 **A.(1) The department may deny, suspend, or revoke a license for a**
4 **violation of this Part or a rule adopted pursuant to this Part.**

5 **(2) The denial, suspension, or revocation of a license by the department**
6 **and the appeal from that action are governed by the department's procedures.**

7 **B.(1) If the department finds that a facility is in repeated noncompliance**
8 **with this Part or rules adopted pursuant to this Part but that the noncompliance**
9 **does not endanger public health and safety, the department may schedule the**
10 **facility for probation rather than suspending or revoking the facility's license.**
11 **The department shall provide notice to the facility of the probation and of the**
12 **items of noncompliance not later than the tenth day before the date the**
13 **probation period begins. The department shall designate a period of not less**
14 **than thirty days during which the facility remains under probation. During the**
15 **probation period, the facility must correct the items that were in noncompliance**
16 **and report the corrections to the department for approval.**

17 **(2) The department may suspend or revoke the license of a facility that**
18 **does not correct items that were in noncompliance or that does not comply with**
19 **this chapter or the rules adopted under this chapter within the applicable**
20 **probation period.**

21 **C. The department may issue an emergency order to suspend a license**
22 **issued pursuant to this Part if the department has reasonable cause to believe**
23 **that the conduct of a license holder creates an immediate danger to the public**
24 **health and safety.**

25 **(1) An emergency suspension under this section is effective immediately**
26 **without a hearing on notice to the license holder.**

27 **(2) On written request of the license holder, the department shall**
28 **conduct a hearing not earlier than the tenth day or later than the thirtieth day**
29 **after the date the hearing request is received to determine if the emergency**
30 **suspension is to be continued, modified, or rescinded.**

1 (3) A hearing and any appeal pursuant to this Section shall be governed
2 by the department's rules.

3 §2162.12. Injunction

4 A. The department may petition a district court for a temporary
5 restraining order to restrain a continuing violation of the standards or licensing
6 requirements provided in this Part if the department finds that the violation
7 creates an immediate threat to the health and safety of the patients of a facility.

8 B. A district court, on petition of the department and on a finding by the
9 court that a person is violating the standards or licensing requirements
10 provided in this Part, may by injunction:

11 (1) Prohibit a person from continuing a violation of the standards or
12 licensing requirements provided in this Part.

13 (2) Restrain or prevent the establishment or operation of a facility
14 without a license issued pursuant to this Part.

15 (3) Grant any other injunctive relief warranted by the facts.

16 C. The attorney general shall institute and conduct a suit authorized by
17 this section at the request of the department.

18 D. Venue for a suit brought pursuant to this Section is in the parish in
19 which the facility is located or in East Baton Rouge Parish.

20 §2162.13. Criminal Penalty

21 A. A person commits an offense if the person violates R.S. 40:2162.4

22 B. An offense under this Section is a Class C misdemeanor.

23 C. Each day of a continuing violation constitutes a separate offense.

24 §2162.14. Imposition of administrative penalty

25 A. The department may impose an administrative penalty on a person
26 licensed under this Part who violates this Part or a rule or order adopted
27 pursuant to this Part. A penalty collected pursuant to this Section or this Part
28 shall be deposited into the state general fund.

29 B.(1) The amount of the penalty may not exceed one thousand dollars
30 for each violation, and each day a violation continues or occurs is a separate

1 violation for purposes of imposing a penalty. The total amount of the penalty
2 assessed for a violation continuing or occurring on separate days under this
3 Subsection may not exceed five thousand dollars.

4 (2) The amount of the penalty shall be based on:

5 (a) The seriousness of the violation, including the nature, circumstances,
6 extent, and gravity of the violation.

7 (b) The threat to health or safety caused by the violation.

8 (c) The history of previous violations.

9 (d) The amount necessary to deter a future violation.

10 (e) Whether the violator demonstrated good faith, including when
11 applicable whether the violator made good faith efforts to correct the violation.

12 C.(1) If the department initially determines that a violation occurred,
13 the department shall give written notice of the report by certified mail to the
14 person. The notice shall:

15 (a) Include a brief summary of the alleged violation.

16 (b) Provide the amount of the recommended penalty.

17 (c) Inform the person of the person's right to a hearing on the
18 occurrence of the violation, the amount of the penalty, or both.

19 (d) Include a statement of the right of the person to judicial review of
20 the order.

21 D.(1) Within twenty days after the date the person receives the notice
22 required by Subsection C of this Section, the person in writing may:

23 (a) Accept the determination and recommended penalty of the
24 department.

25 (b) Make a request for a hearing on the occurrence of the violation, the
26 amount of the penalty, or both.

27 (2) If the person accepts the determination and recommended penalty
28 or if the person fails to respond to the notice, the department by order shall
29 approve the determination and impose the recommended penalty.

30 (3) If the person requests a hearing, the department shall refer the

1 matter to the division of administrative law which shall promptly set a hearing
2 date and give written notice of the time and place of the hearing to the person.
3 An administrative law judge of the division of administrative law shall conduct
4 the hearing.

5 (4) The administrative law judge shall make findings of fact and
6 conclusions of law and promptly issue to the secretary of state health services
7 a proposal for a decision about the occurrence of the violation and the amount
8 of a proposed penalty.

9 (5) Based on the findings of fact, conclusions of law, and proposal for a
10 decision, the secretary by order may:

11 (a) Find that a violation occurred and impose a penalty.

12 (b) Find that a violation did not occur.

13 §2162.15. Payment and collection of administrative penalty; judicial review

14 A. Within thirty days after the date an order of the department
15 imposing an administrative penalty becomes final, the person shall:

16 (1) Pay the penalty.

17 (2) File a petition for judicial review of the department's order
18 contesting the occurrence of the violation, the amount of the penalty, or both.

19 B. Within the thirty day period prescribed by Subsection A of this
20 Section, a person who files a petition for judicial review may:

21 (1) Stay enforcement of the penalty by:

22 (a) Paying the penalty to the court for placement in an escrow account;

23 or

24 (b) Giving the court a supersede as bond approved by the court that:

25 (i) Is for the amount of the penalty; and

26 (ii) Is effective until all judicial review of the secretary's order is final;

27 or

28 (2) Request the court to stay enforcement of the penalty by:

29 (a) Filing with the court a sworn affidavit of the person stating that the
30 person is financially unable to pay the penalty and is financially unable to give

1 the bond.

2 (b) sending a copy of the affidavit to the secretary by certified mail.

3 C. If the department receives a copy of an affidavit pursuant to this
4 Section, the secretary may file with the court, within five days after the date the
5 copy is received, a contest to the affidavit. The court shall hold a hearing on the
6 facts alleged in the affidavit as soon as practicable and shall stay the
7 enforcement of the penalty on finding that the alleged facts are true. The
8 person who files an affidavit has the burden of proving that the person is
9 financially unable to pay the penalty or to give a bond.

10 D. If the person does not pay the penalty and the enforcement of the
11 penalty is not stayed, the penalty may be collected. The attorney general may
12 sue to collect the penalty.

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

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

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

26 H. If the person gave a bond and the penalty is not upheld by the court,
27 the court shall order, when the court's judgment becomes final, the release of
28 the bond. If the person gave a bond and the amount of the penalty is reduced,
29 the court shall order the release of the bond after the person pays the reduced
30 amount.

