

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 2162.16, 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; to
8 provide for a funding formula; and 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 1950,
11 comprised of R.S. 40:2162.1 through 2162.16, 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. Licensing required**

16 A. No agency, business, institution, society, corporation, person or
17 persons, or any other group shall establish or operate a freestanding emergency
18 medical care facility in this state without a license issued by the department
19 pursuant to this Part.

20 B. A license issued to a freestanding emergency medical care facility shall
21 be valid for only one geographic location, and shall be issued only for the person
22 and premises named in the license application. Each separate facility shall have
23 a separate license.

24 C. A license issued under this Part shall be valid for one year from the
25 date of issuance, unless revoked or suspended prior to that date.

26 D. A license issued under this Part shall expire on the last day of the
27 twelfth month after the date of issuance, unless otherwise renewed, or as set
28 forth in rules promulgated by the department.

29 E. A license issued under this Part shall be on a form prescribed by the
30 department.

1 F. A license issued under this Part shall not be transferrable or
2 assignable.

3 G. A license issued to a freestanding emergency medical care facility
4 shall be posted in a conspicuous place on the licensed premises.

5 H. Notwithstanding the provisions of R.S. 40:2162.5, no facility, person,
6 or entity shall hold itself out to the public as a freestanding emergency medical
7 care facility or use any similar term that would give the impression that the
8 facility or person is providing emergency care unless the facility, person or
9 entity holds a license issued pursuant to this Part.

10 §2162.5. Exemptions

11 The following facilities are not required to be licensed pursuant to this
12 Part:

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

15 (2) Temporary emergency clinics in disaster areas.

16 (3) An office or clinic of a licensed physician, dentist, optometrist, or
17 podiatrist.

18 (4) A licensed nursing home.

19 (5) A licensed hospital.

20 (6) A licensed ambulatory surgical center.

21 (7) An urgent care clinic.

22 §2162.6. Rules and regulations; licensing standards

23 A. The licensing agency of the department is hereby authorized and
24 directed to promulgate rules, regulations, and licensing standards, in
25 accordance with the Administrative Procedure Act, to provide for the licensure
26 of freestanding emergency medical care facilities, and to provide for the health,
27 safety, and welfare of persons receiving services from such facilities or
28 providers, and to provide for the safe operation of such facilities. The rules,
29 regulations, and licensing standards shall become effective upon approval of the
30 secretary of the department in accordance with the Administrative Procedure

1 Act. These rules, regulations, and licensing standards shall have the effect of
2 law.

3 B. The licensing agency of the department shall promulgate and publish
4 rules, regulations, and licensing standards to include but not be limited to the
5 following:

6 (1) Licensing application and renewal application procedures and
7 requirements.

8 (2) Administration of the facility.

9 (3) Operational, staffing, and personnel requirements.

10 (4) Qualifications of required professional staff and other personnel.

11 (5) Practice standards to assure quality of care.

12 (6) Practice standards to assure the health, safety, welfare, rights, and
13 comfort of patients, clients, and persons receiving services.

14 (7) Survey and complaint investigations.

15 (8) Initial license, renewal of license, full license, and provisional license.

16 (9) Denial, revocation, suspension, and nonrenewal of licenses, and the
17 appeals therefrom.

18 (10) Planning, construction, and design of the facility.

19 (11) Such other regulations and standards as will ensure proper care and
20 treatment of patients, clients, and persons receiving services.

21 §2162.7. License issuance; application; on-site inspection

22 A. Each application for licensure of a freestanding emergency medical
23 care facility shall be submitted to the department on forms provided by the
24 licensing agency and shall contain such information as the agency may require.
25 Additional information required by the licensing agency shall be provided by
26 the applicant as requested.

27 B. Following receipt of the completed application, the licensing agency
28 shall perform an on-site survey and inspection. If, after the on-site survey and
29 inspection, the licensing agency finds that the facility or provider meets the
30 requirements established under this Part and the licensing rules, regulations

1 and standards adopted pursuant to this Part, a license shall be issued.

2 C. As a condition for renewal of a license, the licensee shall submit to the
3 department's licensing agency, a completed annual renewal application on
4 forms prescribed by the licensing agency which shall contain such information
5 as required by the agency. Upon receipt of the completed annual renewal
6 application, the licensing agency shall determine if the facility continues to meet
7 the requirements established under this Part and the licensing rules, regulations
8 and standards adopted pursuant to this Part. The licensing agency may perform
9 an on-site survey and inspection upon annual renewal. If the facility continues
10 to meet the requirements established under this Part and the licensing rules,
11 regulations, and standards adopted pursuant to this Part, the license shall be
12 renewed.

13 D. The licensing agency may perform on-site inspections as necessary to
14 ensure compliance with the provisions of this Part.

15 E. Each licensing application and each licensing renewal application
16 submitted to the department shall be accompanied by a nonrefundable licensing
17 fee in an amount set by the secretary. The secretary shall establish licensing and
18 survey fees in amounts reasonable and necessary to cover the costs of
19 administering this Part.

20 §2162.8. Operation without license; penalty

21 A. A freestanding emergency medical care facility shall not operate
22 without a license issued by the department. Any such facility operating without
23 a license shall be guilty of a misdemeanor and upon conviction shall be fined no
24 less than five hundred dollars nor more than one thousand dollars. Each day of
25 violation shall constitute a separate offense. It shall be the responsibility of the
26 department to inform the appropriate district attorney of the alleged violation
27 to assure enforcement.

28 B. If a freestanding emergency medical care facility is operating without
29 a license issued by the department, the department shall have the authority to
30 issue an immediate cease and desist order to that facility. Any such facility

1 receiving such a cease and desist order from the department shall immediately
2 cease operations until such time as that facility is issued a license by the
3 department.

4 C. The department shall seek an injunction in the Nineteenth Judicial
5 District Court against any facility or entity that receives a cease and desist order
6 from the department under Subsection B of this Section and that does not cease
7 operations immediately. Any such facility or entity against whom an injunction
8 is granted shall be liable to the department for attorney fees, costs, and
9 damages.

10 §2162.9. Facility operation

11 A licensed freestanding emergency medical care facility shall be in
12 continuous operation twenty-four hours per day, seven days per week.

13 §2162.10. Facility care requirements; complaints

14 A. All licensed freestanding emergency medical care facilities shall
15 comply with current provisions of the Emergency Medical Treatment and
16 Active Labor Act (EMTALA).

17 B. Before a facility accepts any patient for treatment or diagnosis, the
18 facility shall enter into a referral, transmission, or admission agreement with
19 a hospital licensed in this state; such licensed hospital shall be within a
20 thirty-five mile radius of the facility.

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

23 §2162.11. Denial, suspension, probation, or revocation of license; emergency
24 suspension

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

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

29 B.(1) If the department finds that a facility is in repeated noncompliance
30 with this Part or rules adopted pursuant to this Part but that the noncompliance

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

9 (2) The department may suspend or revoke the license of a facility that
10 does not correct items that were in noncompliance or that does not comply with
11 this Chapter or the rules adopted under this Chapter within the applicable
12 probation period.

13 C. The department may issue an emergency order to suspend a license
14 issued pursuant to this Part if the department has reasonable cause to believe
15 that the conduct of a license holder creates an immediate danger to the public
16 health and safety.

17 (1) An emergency suspension under this Section is effective immediately
18 without a hearing on notice to the license holder.

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

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

25 §2162.12. Injunction

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

30 B. A district court, on petition of the department and on a finding by the

1 court that a person is violating the standards or licensing requirements
2 provided in this Part, may by injunction:

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

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

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

8 C. The attorney general shall institute and conduct a suit authorized by
9 this Section at the request of the department.

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

12 §2162.13. Criminal Penalty

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

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

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

16 §2162.14. Imposition of administrative penalty

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

21 B.(1) The amount of the penalty may not exceed one thousand dollars for
22 each violation, and each day a violation continues or occurs is a separate
23 violation for purposes of imposing a penalty. The total amount of the penalty
24 assessed for a violation continuing or occurring on separate days under this
25 Subsection may not exceed five thousand dollars.

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

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

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

30 (c) The history of previous violations.

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

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

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

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

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

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

11 (d) Include a statement of the right of the person to judicial review of the
12 order.

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

15 (a) Accept the determination and recommended penalty of the
16 department.

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

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

22 (3) If the person requests a hearing, the department shall refer the
23 matter to the division of administrative law which shall promptly set a hearing
24 date and give written notice of the time and place of the hearing to the person.
25 An administrative law judge of the division of administrative law shall conduct
26 the hearing.

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

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

3 **(a) Find that a violation occurred and impose a penalty.**

4 **(b) Find that a violation did not occur.**

5 **§2162.15. Payment and collection of administrative penalty; judicial review**

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

8 **(1) Pay the penalty.**

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

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

13 **(1) Stay enforcement of the penalty by:**

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

15 **or**

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

17 **(i) Is for the amount of the penalty; and**

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

19 **or**

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

21 **(a) Filing with the court a sworn affidavit of the person stating that the**
22 **person is financially unable to pay the penalty and is financially unable to give**
23 **the bond.**

24 **(b) Sending a copy of the affidavit to the secretary by certified mail.**

25 **C. If the department receives a copy of an affidavit pursuant to this**
26 **Section, the secretary may file with the court, within five days after the date the**
27 **copy is received, a contest to the affidavit. The court shall hold a hearing on the**
28 **facts alleged in the affidavit as soon as practicable and shall stay the**
29 **enforcement of the penalty on finding that the alleged facts are true. The person**
30 **who files an affidavit has the burden of proving that the person is financially**

1 unable to pay the penalty or to give a bond.

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

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

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

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

18 H. If the person gave a bond and the penalty is not upheld by the court,
19 the court shall order, when the court's judgment becomes final, the release of
20 the bond. If the person gave a bond and the amount of the penalty is reduced,
21 the court shall order the release of the bond after the person pays the reduced
22 amount.

23 §2162.16. Funding formula

24 A. The Department of Health and Hospitals shall develop a funding
25 formula to provide for payment of enhanced reimbursement rates to
26 freestanding emergency care facilities. The source of funds for any enhanced
27 rates shall be from efficiencies achieved through patient care management of
28 the Medicaid Bayou Health plans and savings achieved through reduced
29 utilization of hospital based emergency departments.

30 B. The department is hereby authorized to promulgate any rules or

1 **regulations, in accordance with the Administrative Procedures Act, as may be**
 2 **necessary to carry out the purpose of this Section.**

The original instrument was prepared by Jerry J. Guillot. The following digest, which does not constitute a part of the legislative instrument, was prepared by Christine Arbo Peck.

DIGEST

SB 465 Engrossed

2016 Regular Session

Barrow

Enacts the "Freestanding Emergency Medical Care Facilities Law".

Proposed law provides relative to the regulation of freestanding emergency medical care facilities; provides for the licensure of freestanding emergency medical facilities; establishes minimum standards; provides for a funding formula; and provides for an administrative fee.

Effective August 1, 2016.

(Adds R.S. 40:2162.1-2162.16)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Health and Welfare to the original bill

1. Replaces licensing provisions of the bill with language consistent with existing Louisiana licensing laws for other health care facilities and includes a funding formula provision.