

1 SB140
2 181610-6
3 By Senator Waggoner
4 RFD: Health and Human Services
5 First Read: 09-FEB-17

1 SB140

2
3
4 ENGROSSED

5
6
7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to the Department of Public Health; to
12 amend Section 22-21-33, Code of Alabama 1975; to eliminate the
13 requirement that the department publish and mail a directory
14 of all licensed hospitals in the state to all licensed
15 inpatient hospitals, licensed hospices, and certified home
16 health agencies every three months.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. Section 22-21-33, Code of Alabama 1975,
19 is amended to read as follows:

20 "§22-21-33.

21 "(a) (1) Any individual, association, corporation,
22 partnership, limited liability company, or other business
23 entity who operates or causes to be operated a hospital of any
24 kind as defined in this article or any ~~regulations~~ rules
25 promulgated hereunder, without having been granted a license
26 ~~therefor~~ by the State Board of Health shall be guilty of a
27 Class B misdemeanor upon conviction, except that any

1 individual, association, corporation, partnership, limited
2 liability company, or other business entity who operates or
3 causes to be operated a hospital of any kind as defined in
4 this article or any ~~regulations~~ rules promulgated hereunder
5 without having been granted a license ~~therefor~~ by the State
6 Board of Health shall be guilty of a Class A misdemeanor upon
7 conviction of a second or any subsequent offense.

8 "(2) The State Board of Health, upon determination
9 that a facility or business is operating as a hospital, within
10 the meaning of this article or any rules promulgated
11 hereunder, and that the facility or business does not have a
12 current and valid license granted by the State Board of
13 Health, may apply to the circuit court of the county in which
14 the unlicensed facility or business is located for declaratory
15 and injunctive relief. The proceedings shall be expedited. The
16 sole evidentiary questions before the court in a proceeding
17 shall be whether the facility or business that is the subject
18 of the action meets the definition of a hospital, within the
19 meaning of this article and any rules promulgated hereunder,
20 and whether the facility or business has been granted a
21 current and valid license to operate by the State Board of
22 Health. If the State Board of Health prevails on these
23 questions, then the court ~~shall~~, upon request of the State
24 Board of Health, ~~forthwith~~ shall grant declaratory and
25 injunctive relief requiring the operator or operators to close
26 the facility or business and requiring the operator or
27 operators to move all residents or patients to appropriate

1 placements. Any individual failing to obey an injunction to
2 close a hospital shall be guilty of a Class A misdemeanor. Any
3 individual, after having once been subject to such an
4 injunction, who shall later operate or cause to be operated a
5 hospital, as defined in this article or any ~~regulations~~ rules
6 promulgated hereunder, without having been granted a license
7 therefor by the State Board of Health shall be guilty of a
8 Class A misdemeanor.

9 "(3) The State Board of Health ~~may~~, upon the advice
10 of the Attorney General, may maintain an action in the name of
11 the state for an injunction to restrain any state, county, or
12 local governmental unit, or any division, department, board,
13 or agency thereof, or any individual, association,
14 corporation, partnership, limited liability company, or other
15 business entity, from operating, conducting, or managing a
16 hospital in violation of ~~any provisions of~~ this article, or
17 any ~~regulation~~ rule promulgated hereunder. Evidence that a
18 person who is a licensed health care professional is or has
19 been operating an unlicensed hospital or knowingly is or has
20 been an employee of an unlicensed hospital shall be grounds
21 for license revocation by the applicable professional
22 licensing board or boards.

23 "(4) No county or municipality shall grant a
24 business license to a hospital, as defined in this article,
25 unless the facility holds a current license to operate granted
26 by the State Board of Health.

1 "(5) In any action to collect a fee for services
2 brought against a resident or patient by a hospital, as
3 defined in this article or ~~regulations~~ rules promulgated
4 hereunder, it shall be a defense to the action to demonstrate
5 that the operator of the hospital did not have a current and
6 valid license to operate pursuant to this article at the time
7 the services in question were rendered.

8 "(b) (1) A licensed inpatient hospital acting through
9 an authorized agent of the licensed inpatient hospital shall
10 not knowingly refer to an unlicensed hospital any person who
11 is in need of care rendered by a licensed hospital. A licensed
12 hospice or certified home health agency acting through an
13 authorized agent of the licensed hospice or certified home
14 health agency shall not knowingly provide treatment or
15 services in an unlicensed hospital to a person who is in need
16 of care rendered by a licensed hospital.

17 "(2) The Department of Public Health shall maintain,
18 in electronic format and available on the Internet, a current
19 directory of all licensed hospitals. ~~The department, shall~~
20 ~~publish and mail to licensed inpatient hospitals, licensed~~
21 ~~hospices, and certified home health agencies every three~~
22 ~~months a listing of licensed hospitals.~~ The directory shall be
23 maintained in a searchable database so that the licensure
24 status of all licensed hospitals may be determined for the
25 preceding four years and the then current year.

26 The Department, upon written request from a licensed
27 inpatient hospital, shall provide to a designated

1 representative of the hospital, a listing of any changes to
2 the directory of all licensed hospitals through use of
3 electronic communication, such as email, on a weekly basis.

4 "(3) A determination of actual knowledge that a
5 facility or business was unlicensed shall be supported by
6 evidence that the unlicensed hospital ~~had not been listed in~~
7 ~~either the printed or electronic directory during the 12~~
8 ~~months immediately prior to the time the referral was not~~
9 listed in the directory maintained by the department on the
10 day the referral or the admission was made or treatment was
11 provided. In any action to levy a fine or revoke a license
12 under this section, it shall be a defense to the action to
13 demonstrate that the unlicensed inpatient hospital appeared in
14 the ~~list published by the department, either electronically or~~
15 ~~in print format,~~ directory as a licensed inpatient hospital
16 ~~during the 12 months immediately prior to the time~~ on the day
17 the referral or admission was made or the treatment was
18 provided.

19 "(4) Any licensed inpatient hospital acting through
20 an authorized agent of the licensed inpatient hospital that
21 knowingly makes a referral to an unlicensed hospital of a
22 person in need of care rendered by a licensed hospital, or any
23 licensed hospice or any certified home health agency acting
24 through an authorized agent of the licensed hospice or
25 certified home health agency that knowingly provides treatment
26 in an unlicensed hospital to a person in need of care rendered
27 by a licensed hospital, may be subject to a civil penalty

1 imposed by the Board of Health not to exceed one thousand five
2 hundred dollars (\$1,500) per instance.

3 "(5) All civil monetary penalties collected pursuant
4 to this section or Section 22-21-34 shall be paid to the
5 Department of Human Resources and held in a dedicated fund for
6 the sole purpose of making grants or disbursements to assist
7 protected persons, as this term is defined in Section 38-9-2, ~~et~~
8 ~~et seq.~~ with appropriate placement or relocation from an
9 unlicensed facility into a licensed facility or relocation
10 from a facility undergoing license termination, suspension, or
11 revocation, pursuant to Section 22-21-25, to an appropriate
12 setting. The Department of Human Resources is hereby
13 authorized to make grants or disbursements from this fund to
14 protected persons or to individuals or public or private
15 organizations acting on behalf of a protected person.

16 "(c) (1) For the purposes of this section, the term
17 "licensed inpatient hospital" shall mean a licensed acute care
18 hospital, long-term acute care hospital, rehabilitation
19 hospital, inpatient hospice, skilled nursing facility,
20 intermediate care facility, assisted living facility, or
21 specialized care assisted living facility.

22 "(2) For the purposes of this section, the term
23 "knowingly" shall mean actual knowledge by a licensed
24 inpatient hospital, licensed hospice, or certified home health
25 agency acting through an authorized agent making a referral or
26 providing services, that the unlicensed hospital to which the

1 referral is made or services rendered is unlicensed within the
2 meaning of this section."

3 Section 2. This act shall become effective on the
4 first day of the third month following its passage and
5 approval by the Governor, or its otherwise becoming law.

1
2
3
4
5
6
7
8
9
10

11
12
13
14
15
16
17

Senate

Read for the first time and referred to the Senate
committee on Health and Human Services..... 09-FEB-17

Read for the second time and placed on the calen-
dar 1 amendment..... 23-FEB-17

Read for the third time and passed as amended 09-MAR-17

Yeas 30
Nays 0

Patrick Harris,
Secretary.