

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

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8 SYNOPSIS: Under existing law, the Department of Public  
9 Health is required to maintain, in electronic and  
10 paper form, a directory of all licensed hospitals  
11 in the state and to publish and mail this directory  
12 to all licensed inpatient hospitals, licensed  
13 hospices, and certified home health agencies every  
14 three months.

15 This bill would eliminate the requirement  
16 that the Department of Public Health publish and  
17 mail the directory every three months to licensed  
18 hospitals.

19  
20 A BILL  
21 TO BE ENTITLED  
22 AN ACT  
23

24 Relating to the Department of Public Health; to  
25 amend Section 22-21-33, Code of Alabama 1975; to eliminate the  
26 requirement that the department publish and mail a directory  
27 of all licensed hospitals in the state to all licensed

1 inpatient hospitals, licensed hospices, and certified home  
2 health agencies every three months.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

6 "§22-21-33.

7 "(a) (1) Any individual, association, corporation,  
8 partnership, limited liability company, or other business  
9 entity who operates or causes to be operated a hospital of any  
10 kind as defined in this article or any ~~regulations~~ rules  
11 promulgated hereunder, without having been granted a license  
12 ~~therefor~~ by the State Board of Health shall be guilty of a  
13 Class B misdemeanor upon conviction, except that any  
14 individual, association, corporation, partnership, limited  
15 liability company, or other business entity who operates or  
16 causes to be operated a hospital of any kind as defined in  
17 this article or any ~~regulations~~ rules promulgated hereunder  
18 without having been granted a license ~~therefor~~ by the State  
19 Board of Health shall be guilty of a Class A misdemeanor upon  
20 conviction of a second or any subsequent offense.

21 "(2) The State Board of Health, upon determination  
22 that a facility or business is operating as a hospital, within  
23 the meaning of this article or any rules promulgated  
24 hereunder, and that the facility or business does not have a  
25 current and valid license granted by the State Board of  
26 Health, may apply to the circuit court of the county in which  
27 the unlicensed facility or business is located for declaratory

1 and injunctive relief. The proceedings shall be expedited. The  
2 sole evidentiary questions before the court in a proceeding  
3 shall be whether the facility or business that is the subject  
4 of the action meets the definition of a hospital, within the  
5 meaning of this article and any rules promulgated hereunder,  
6 and whether the facility or business has been granted a  
7 current and valid license to operate by the State Board of  
8 Health. If the State Board of Health prevails on these  
9 questions, then the court ~~shall~~, upon request of the State  
10 Board of Health, ~~forthwith~~ shall grant declaratory and  
11 injunctive relief requiring the operator or operators to close  
12 the facility or business and requiring the operator or  
13 operators to move all residents or patients to appropriate  
14 placements. Any individual failing to obey an injunction to  
15 close a hospital shall be guilty of a Class A misdemeanor. Any  
16 individual, after having once been subject to such an  
17 injunction, who shall later operate or cause to be operated a  
18 hospital, as defined in this article or any ~~regulations~~ rules  
19 promulgated hereunder, without having been granted a license  
20 therefor by the State Board of Health shall be guilty of a  
21 Class A misdemeanor.

22 "(3) The State Board of Health ~~may~~, upon the advice  
23 of the Attorney General, may maintain an action in the name of  
24 the state for an injunction to restrain any state, county, or  
25 local governmental unit, or any division, department, board,  
26 or agency thereof, or any individual, association,  
27 corporation, partnership, limited liability company, or other

1 business entity, from operating, conducting, or managing a  
2 hospital in violation of ~~any provisions of~~ this article, or  
3 any ~~regulation~~ rule promulgated hereunder. Evidence that a  
4 person who is a licensed health care professional is or has  
5 been operating an unlicensed hospital or knowingly is or has  
6 been an employee of an unlicensed hospital shall be grounds  
7 for license revocation by the applicable professional  
8 licensing board or boards.

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

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

20 "(b) (1) A licensed inpatient hospital acting through  
21 an authorized agent of the licensed inpatient hospital shall  
22 not knowingly refer to an unlicensed hospital any person who  
23 is in need of care rendered by a licensed hospital. A licensed  
24 hospice or certified home health agency acting through an  
25 authorized agent of the licensed hospice or certified home  
26 health agency shall not knowingly provide treatment or

1 services in an unlicensed hospital to a person who is in need  
2 of care rendered by a licensed hospital.

3 "(2) The Department of Public Health shall maintain,  
4 in electronic format and available on the Internet, a current  
5 directory of all licensed hospitals. ~~The department, shall~~  
6 ~~publish and mail to licensed inpatient hospitals, licensed~~  
7 ~~hospices, and certified home health agencies every three~~  
8 ~~months a listing of licensed hospitals.~~ The directory shall be  
9 maintained in a searchable database so that the licensure  
10 status of all licensed hospitals may be determined for the  
11 preceding four years and the then current year.

12 "(3) A determination of actual knowledge that a  
13 facility or business was unlicensed shall be supported by  
14 evidence that the unlicensed hospital ~~had not been listed in~~  
15 ~~either the printed or electronic directory during the 12~~  
16 ~~months immediately prior to the time the referral~~ was not  
17 listed in the directory maintained by the department on the  
18 day the referral or admission was made or treatment provided.  
19 In any action to levy a fine or revoke a license under this  
20 section, it shall be a defense to the action to demonstrate  
21 that the unlicensed inpatient hospital appeared in the ~~list~~  
22 ~~published by the department, either electronically or in print~~  
23 ~~format,~~ directory as a licensed inpatient hospital ~~during the~~  
24 ~~12 months immediately prior to the time~~ on the day the  
25 referral was made or the treatment was provided.

26 "(4) Any licensed inpatient hospital acting through  
27 an authorized agent of the licensed inpatient hospital that

1 knowingly makes a referral to an unlicensed hospital of a  
2 person in need of care rendered by a licensed hospital, or any  
3 licensed hospice or any certified home health agency acting  
4 through an authorized agent of the licensed hospice or  
5 certified home health agency that knowingly provides treatment  
6 in an unlicensed hospital to a person in need of care rendered  
7 by a licensed hospital, may be subject to a civil penalty  
8 imposed by the Board of Health not to exceed one thousand five  
9 hundred dollars (\$1,500) per instance.

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

23           "(c) (1) For the purposes of this section, the term  
24 "licensed inpatient hospital" shall mean a licensed acute care  
25 hospital, long-term acute care hospital, rehabilitation  
26 hospital, inpatient hospice, skilled nursing facility,

1 intermediate care facility, assisted living facility, or  
2 specialized care assisted living facility.

3 "(2) For the purposes of this section, the term  
4 "knowingly" shall mean actual knowledge by a licensed  
5 inpatient hospital, licensed hospice, or certified home health  
6 agency acting through an authorized agent making a referral or  
7 providing services, that the unlicensed hospital to which the  
8 referral is made or services rendered is unlicensed within the  
9 meaning of this section."

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