

HEALTH AND SAFETY CODE

TITLE 4. HEALTH FACILITIES

SUBTITLE B. LICENSING OF HEALTH FACILITIES

CHAPTER 254. FREESTANDING EMERGENCY MEDICAL CARE FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 254.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of State Health Services.

(2) "Emergency care" has the meaning assigned by Sections 843.002 and 1301.155, Insurance Code.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Facility" means a freestanding emergency medical care facility.

(5) "Freestanding emergency medical care facility" means a facility, structurally separate and distinct from a hospital, that receives an individual and provides emergency care, as defined by Subdivision (2).

(6) "Provider network" has the meaning assigned by Section 1456.001, Insurance Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0809, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 185 (S.B. 425), Sec. 2, eff. September 1, 2015.

SUBCHAPTER B. LICENSING

Sec. 254.051. LICENSE REQUIRED. (a) Except as provided by Section 254.052, a person may not establish or operate a freestanding emergency medical care facility in this state without a license issued under this chapter.

(b) Except as provided by Section 254.052, a facility or

person may not hold itself out to the public as a freestanding emergency medical care facility or use any similar term, as defined by department rule, that would give the impression that the facility or person is providing emergency care unless the facility or person holds a license issued under this chapter.

(c) Each separate facility location must have a separate license.

(d) A license issued under this chapter is not transferable or assignable.

(e) A license may be issued only for the establishment or operation of a facility that is in continuous operation 24 hours per day and 7 days per week.

(f) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(68), eff. April 2, 2015.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1040 (H.B. 3085), Sec. 1, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0810, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(68), eff. April 2, 2015.

Sec. 254.052. EXEMPTIONS FROM LICENSING REQUIREMENT. The following facilities are not required to be licensed under this chapter:

(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 physician, 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 Subsection (5) or (6);

(8) a facility that is owned or operated by a hospital described by Subsection (5) or (6) 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 Centers for Medicare and Medicaid Services; or

(B) granted provider-based status by the Centers for Medicare and Medicaid Services; or

(9) a licensed ambulatory surgical center.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.

Sec. 254.053. LICENSE APPLICATION AND ISSUANCE. (a) An applicant for a license under this chapter must submit an application to the department on a form prescribed by the department.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the executive commissioner by rule.

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

(d) The application must contain evidence that the facility meets the minimum standards and requirements specified in Section 254.151.

(e) The department shall issue a license if, after inspection and investigation, it finds that the applicant and the facility meet the requirements of this chapter and the standards adopted under this chapter.

(f) The license fee must be paid on renewal of the license. The term of a license issued under this chapter is two years.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1040 (H.B. 3085), Sec. 2, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0811, eff. April 2, 2015.

SUBCHAPTER C. EXECUTIVE COMMISSIONER AND DEPARTMENT POWERS AND DUTIES

Sec. 254.101. ADOPTION OF RULES. The executive commissioner shall adopt rules necessary to implement this chapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate a facility.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.

Sec. 254.102. FEES. The executive commissioner by rule shall set fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0812, eff. April 2, 2015.

Sec. 254.103. INSPECTIONS. The department may inspect a facility at reasonable times as necessary to ensure compliance with this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.

Sec. 254.104. FREESTANDING EMERGENCY MEDICAL CARE FACILITY LICENSING FUND. All fees and administrative penalties collected under this chapter shall be deposited in the state treasury to the credit of the freestanding emergency medical care facility licensing fund and may be appropriated to the department only to administer and enforce this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1093 (H.B. 2041), Sec. 4, eff. September 1, 2019.

SUBCHAPTER D. REGULATION OF FACILITIES

Sec. 254.151. MINIMUM STANDARDS. (a) The executive commissioner shall adopt rules necessary to implement this chapter, 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;

(11) disclosure, if applicable, of the following:

(A) the name and social security number of the sole proprietor, if the facility is a sole proprietor;

(B) the name and social security number of each general partner who is an individual, if the facility is a partnership;

(C) the name and social security number of any individual who has an ownership interest of more than 25 percent in the corporation, if the facility is a corporation; and

(D) the name and license numbers of any physicians licensed by the Texas Medical Board who have a financial interest in the facility or any entity which has an ownership interest in the facility;

(12) transfer protocols for patients requiring advanced medical care at a hospital; and

(13) any other aspect of the operation of a facility that the executive commissioner considers necessary to protect the facility's patients and the public.

(b) In adopting the rules required under Subsection (a) concerning transfer protocols, the executive commissioner must consult with physicians who provide emergency care, medical consultant organizations, and organizations representing hospitals licensed in this state.

(c) The minimum standards under this section shall apply to all facilities licensed under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0813, eff. April 2, 2015.

Sec. 254.153. FACILITY CARE REQUIREMENTS. (a) A facility shall provide to each facility patient, without regard to the individual's ability to pay, an appropriate medical screening, examination, and stabilization within the facility's capability, including ancillary services routinely available to the facility, to determine whether an emergency medical condition exists and any necessary stabilizing treatment.

(b) Before a facility accepts any patient for treatment or diagnosis, the facility shall enter into a referral, transmission, or admission agreement with a hospital licensed in this state.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.

Sec. 254.154. COMPLAINTS. A person may file a complaint with the department against a facility licensed under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.

Sec. 254.155. NOTICE OF FEES.

(a) A facility shall post notice that:

(1) states:

(A) the facility is a freestanding emergency medical care facility;

(B) the facility charges rates comparable to a hospital emergency room and may charge a facility fee;

(C) a facility or a physician providing medical care at the facility may be an out-of-network provider for the patient's health benefit plan provider network; and

(D) a physician providing medical care at the facility may bill separately from the facility for the medical care provided to a patient; and

(2) either:

(A) lists the health benefit plans in which the facility is an in-network provider in the health benefit plan's provider network; or

(B) states the facility is an out-of-network provider for all health benefit plans.

(b) The notice required by this section must be posted prominently and conspicuously:

(1) at the primary entrance to the facility;

(2) in each patient treatment room;

(3) at each location within the facility at which a person pays for health care services; and

(4) on the home page of the facility's Internet website or on a different page available through a hyperlink that is:

(A) entitled "Insurance Information"; and

(B) located prominently on the home page.

(c) The notice required by Subsections (b)(1), (2), and (3) must be in legible print on a sign with dimensions of at least 8.5 inches by 11 inches.

(d) Notwithstanding Subsection (b), a facility that is an in-network provider in one or more health benefit plan provider

networks complies with Subsection (a)(2) if the facility:

(1) provides notice on the facility's Internet website listing the health benefit plans in which the facility is an in-network provider in the health benefit plan's provider network; and

(2) provides to a patient written confirmation of whether the facility is an in-network provider in the patient's health benefit plan's provider network.

(e) A facility may not add to or alter the language of a notice required by this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 185 (S.B. 425), Sec. 3, eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 175 (H.B. 3276), Sec. 2, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1093 (H.B. 2041), Sec. 5, eff. September 1, 2019.

Sec. 254.1555. CERTAIN FEES PROHIBITED. (a) A facility that provides a health care service, including testing or vaccination, to an individual accessing the service from the individual's vehicle may not charge the individual or a third-party payor a facility or observation fee.

(b) This section may not be construed as expanding the type of health care services a facility is authorized to provide under this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 1050 (S.B. 2038), Sec. 2, eff. September 1, 2021.

Sec. 254.1556. DISCLOSURE OF CERTAIN PRICES AND FEES DURING DECLARED DISASTER; CONSTRUCTION. (a) A facility that provides testing or vaccination for an infectious disease for which a state of disaster has been declared under Chapter 418, Government Code, shall disclose the price the facility charges for the test or vaccine and any facility fees, supply costs, and other costs associated with the test or vaccine in accordance with the disclosure requirements described by Section 254.156, as added by

Chapter 1093 (H.B. 2041), Acts of the 86th Legislature, Regular Session, 2019.

(b) This section may not be construed as expanding the type of health care services a facility is authorized to provide under this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 1050 (S.B. 2038), Sec. 2, eff. September 1, 2021.

Sec. 254.156. DISCLOSURE STATEMENT REQUIRED. (a) In addition to the notice required under Section 254.155, a facility shall provide to a patient or a patient's legally authorized representative a written disclosure statement in accordance with this section that:

(1) lists the facility's observation and facility fees that may result from the patient's visit; and

(2) lists the health benefit plans in which the facility is a network provider in the health benefit plan's provider network or states that the facility is an out-of-network provider for all health benefit plans.

(b) A facility shall provide the disclosure statement in accordance with the standards prescribed by Section 254.153(a).

(c) The disclosure statement must be:

(1) printed in at least 16-point boldface type;

(2) in a contrasting color using a font that is easily readable; and

(3) in English and Spanish.

(d) The disclosure statement:

(1) must include:

(A) the name and contact information of the facility; and

(B) a place for the patient or the patient's legally authorized representative and an employee of the facility to sign and date the disclosure statement;

(2) may include information on the facility's procedures for seeking reimbursement from the patient's health benefit plan; and

(3) must, as applicable:

(A) state "This facility charges a facility fee for medical treatment" and include:

(i) the facility's median facility fee;
(ii) a range of possible facility fees; and
(iii) the facility fees for each level of care provided at the facility; and

(B) state "This facility charges an observation fee for medical treatment" and include:

(i) the facility's median observation fee;
(ii) a range of possible observation fees;
and

(iii) the observation fees for each level of care provided at the facility.

(e) A facility may include only the information described by Subsection (d) in the required disclosure statement and may not include any additional information in the statement. The facility annually shall update the statement.

(f) A facility shall provide each patient with a physical copy of the disclosure statement even if the patient refuses or is unable to sign the statement. If a patient refuses or is unable to sign the statement, as required by this section, the facility shall indicate in the patient's file that the patient failed to sign.

(g) A facility shall retain a copy of a signed disclosure statement provided under this section until the first anniversary of the date on which the disclosure was signed.

(h) A facility is not required to provide notice to a patient or a patient's legally authorized representative under this section if the facility determines before providing emergency health care services to the patient that the patient will not be billed for the services.

(i) A facility complies with the requirements of Subsections (a)(1) and (d)(3) if the facility posts on the facility's Internet website in a manner that is easily accessible and readable:

(1) the facility's standard charges, including the fees described by those subsections; and

(2) updates to the standard charges at least annually

or more frequently as appropriate to reflect the facility's current charges.

(j) A facility's failure to obtain the signed disclosure statement required by this section from the patient or the patient's legally authorized representative may not be a determining factor in the adjudication of liability for health care services provided to the patient at the facility.

Added by Acts 2019, 86th Leg., R.S., Ch. 1093 (H.B. 2041), Sec. 6, eff. September 1, 2019.

Sec. 254.157. CERTAIN ADVERTISING PROHIBITED. (a) A facility may not advertise or hold itself out as a network provider, including by stating that the facility "takes" or "accepts" any insurer, health maintenance organization, health benefit plan, or health benefit plan network, unless the facility is a network provider of a health benefit plan issuer.

(b) A facility may not post the name or logo of a health benefit plan issuer in any signage or marketing materials if the facility is an out-of-network provider for all of the issuer's health benefit plans.

(c) A violation of this section is a false, misleading, or deceptive act or practice under Subchapter E, Chapter 17, Business & Commerce Code, and is actionable under that subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1093 (H.B. 2041), Sec. 6, eff. September 1, 2019.

Sec. 254.158. REMOVAL OF SIGNS. A facility that closes or for which a license issued under this chapter expires or is suspended or revoked shall immediately remove or cause to be removed any signs within view of the general public indicating that the facility is in operation.

Added by Acts 2019, 86th Leg., R.S., Ch. 1093 (H.B. 2041), Sec. 6, eff. September 1, 2019.

Sec. 254.160. PROHIBITED PRICING PRACTICES DURING DECLARED STATE OF DISASTER. (a) In this section, "unconscionable price" means a price that is more than 200 percent of the average price for

the same or a substantially similar product or service provided to other individuals by health care facilities located in the same county or nearest county to the county in which the freestanding emergency medical care facility is located, as applicable, according to data collected by the department under Chapter 108.

(b) During a state of disaster declared by the governor under Chapter 418, Government Code, a facility may not:

(1) charge an individual an unconscionable price for a product or service provided at the facility; or

(2) knowingly or intentionally charge a third-party payor, including a health benefit plan insurer, a price higher than the price charged to an individual for the same product or service based on the payor's liability for payment or partial payment of the product or service.

(c) Subsection (b)(2) does not prohibit a facility from:

(1) offering an uninsured individual a cash discount for a particular product or service; or

(2) accepting directly from an individual full payment for a health care product or service in lieu of submitting a claim to the individual's health benefit plan.

Added by Acts 2021, 87th Leg., R.S., Ch. 1050 (S.B. 2038), Sec. 3, eff. September 1, 2021.

SUBCHAPTER E. ENFORCEMENT AND PENALTIES

Sec. 254.201. DENIAL, SUSPENSION, PROBATION, OR REVOCATION OF LICENSE. (a) The department may deny, suspend, or revoke a license for a violation of this chapter or a rule adopted under this chapter.

(b) The denial, suspension, or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

(c) If the department finds that a facility is in repeated noncompliance with this chapter or rules adopted under this chapter but that the noncompliance does not endanger public health and safety, the department may schedule the facility for probation

rather than suspending or revoking the facility's license. The department shall provide notice to the facility of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. The department shall designate a period of not less than 30 days during which the facility remains under probation. During the probation period, the facility must correct the items that were in noncompliance and report the corrections to the department for approval.

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. March 1, 2010.

Sec. 254.202. EMERGENCY SUSPENSION. (a) The department may issue an emergency order to suspend a license issued under this chapter if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety.

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

(c) On written request of the license holder to the department for a hearing, the department shall refer the matter to the State Office of Administrative Hearings. An administrative law judge of that office shall conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received by the department to determine if the emergency suspension is to be continued, modified, or rescinded.

(d) A hearing and any appeal under this section are governed by the department's rules for a contested case hearing and Chapter 2001, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. March 1, 2010.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0814, eff. April 2, 2015.

Sec. 254.203. INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements provided under this chapter or of Section 254.158 if the department finds that the violation creates an immediate threat to the health and safety of the patients of a facility or of the public.

(b) A district court, on petition of the department and on a finding by the court that a person is violating the standards or licensing requirements provided under this chapter or is violating Section 254.158, may by injunction:

- (1) prohibit a person from continuing the violation;
- (2) restrain or prevent the establishment or operation of a facility without a license issued under this chapter; or
- (3) grant any other injunctive relief warranted by the facts.

(c) The attorney general shall institute and conduct a suit authorized by this section at the request of the department.

(d) Venue for a suit brought under this section is in the county in which the facility is located or in Travis County.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. March 1, 2010.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1062 (H.B. 1112), Sec. 2, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1093 (H.B. 2041), Sec. 7, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 10.004(b), eff. September 1, 2021.

Sec. 254.204. CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 254.051.

(b) An offense under this section is a Class C misdemeanor.

(c) Each day of a continuing violation constitutes a separate offense.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2010.

Sec. 254.205. IMPOSITION OF ADMINISTRATIVE PENALTY.

(a) The department may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter. A penalty collected under this section or Section 254.206 shall be deposited in the state treasury to the credit of the freestanding emergency medical care facility licensing fund described by Section 254.104.

(b) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

(c) The penalty may not exceed \$1,000 for each violation. Each day of a continuing violation may be considered a separate violation for purposes of imposing a penalty.

(d) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the threat to health or safety caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(6) any other matter that justice may require.

(e) If the department initially determines that a violation occurred, the department shall give written notice of the report by certified mail to the person.

(f) The notice under Subsection (e) must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(g) Within 20 days after the date the person receives the notice under Subsection (e), the person in writing may:

(1) accept the determination and recommended penalty of the department; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(h) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the department by order shall impose the recommended penalty.

(i) If the person requests a hearing, the department shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date. The department shall give written notice of the time and place of the hearing to the person. An administrative law judge of that office shall conduct the hearing.

(j) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department a written proposal for decision about the occurrence of the violation and the amount of a proposed penalty.

(k) Based on the findings of fact, conclusions of law, and proposal for decision, the department by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(1) The notice of the order under Subsection (k) that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. March 1, 2010.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0815, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1093 (H.B. 2041), Sec. 8, eff. September 1, 2019.

Sec. 254.206. PAYMENT AND COLLECTION OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW. (a) Within 30 days after the date an order of the department under Section 254.205(k) that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

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

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the department's order is final; or

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

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department by certified mail.

(c) If the department receives a copy of an affidavit under Subsection (b)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(d) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected. The attorney general may sue to collect the penalty.

(e) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(f) If the court does not sustain the finding that a

violation occurred, the court shall order that a penalty is not owed.

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

(h) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond. If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. March 1, 2010.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0816, eff. April 2, 2015.

Sec. 254.207. ENFORCEMENT. Notwithstanding any conflicting provision in this subchapter and except for good cause shown, the Health and Human Services Commission shall impose the following on a person licensed under this chapter who violates Section 254.160 or a rule adopted under that section:

(1) for the first violation, an administrative penalty in an amount equal to \$10,000;

(2) for the second violation:

(A) an administrative penalty in an amount equal to \$50,000; and

(B) a suspension of the person's license for 30 days; and

(3) for the third violation, a permanent revocation of

the person's license.

Added by Acts 2021, 87th Leg., R.S., Ch. 1050 (S.B. [2038](#)), Sec. 4,
eff. September 1, 2021.