

HEALTH FACILITY LICENSING IN THE EVENT OF A DISASTER

Prepared By: Office of General Counsel, Texas Department of State Health Services
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ISSUE: Can a facility in Texas provide medical services, in response to a disaster, to persons whose condition requires an overnight stay (more than 24 hours), without obtaining a hospital license?

ANSWER: In most cases, unless those overnight services are provided in conjunction with the facility maintaining a lab, X-Ray or surgery or obstetrical facility, a hospital license may not be required. If these are services are provided and maintained, the facility may need to obtain a hospital license or be exempt from licensure as set forth below, all of which requires a case by case analysis.

DISCUSSION: The laws governing hospitals define a hospital, in part, as an establishment that provides certain medical services for more than 24 hours, for two or more unrelated individuals that require diagnosis, treatment or care for illness, injury, deformity *and regularly* maintains a clinical lab, diagnostic X-ray, surgical or obstetrical care facility *and* other “definitive” medical or surgical treatment. (Health and Safety Code, Sec. 241.003(5)) As a result, during a disaster, a triage unit, temporary medical facility (services and stay are less than 24 hours), or medical special needs shelters (needs do not reach the care level to necessitate a hospital stay) can be established without requiring that the location(s) obtain a hospital license as these do not meet the definition of “hospital.” However, if proposed services do meet the definition of “hospital”, as noted above, and if the facility within which they are to be performed is not maintained or operated by the federal or state government or agency thereof (Sec. 241.004), the facility must obtain a hospital license. Also, if the facility holds an active license under Texas law as a nursing home (Sec. 241.004(1) and HSC ch. 242), or is licensed as a private mental health facility under Texas law (Sec. 241.004(1) and HSC ch. 577), it is exempt from hospital licensure.

WAIVER OF LAW OR RULES: If a facility is currently licensed by the Department, once a disaster is declared by the governor, in order to address surge capacity, any rules restricting the number of persons a hospital can serve under its existing licensed capacity can be waived by the Governor to increase capacity. The Governor may also suspend any other rules or laws than prevent, hinder or delay necessary action in coping with a disaster.

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