

- SUBJECT:** Changing how certain freestanding ERs advertise, requiring notices
- COMMITTEE:** Public Health — favorable, without amendment
- VOTE:** 10 ayes — Kolkhorst, Naishtat, Collier, Cortez, S. Davis, Guerra, S. King, Laubenberg, J.D. Sheffield, Zedler
- 0 nays — None
- 1 absent — Coleman
- WITNESSES:** For — AJ Padilla (*Registered, but did not testify*: Brad Shields, Texas Association of Free-Standing Emergency Centers; David Williams, Texas Nurse Practitioners)
- Against — None
- On — None
- BACKGROUND:** Health and Safety Code, sec. 241.006 authorizes the Department of State Health Services (DSHS) to review and coordinate the placement, format, and language of postings required in hospitals.
- Health and Safety Code, ch. 254 defines “freestanding emergency medical care facility” as a facility, structurally separate and distinct from a hospital that provides emergency care. It exempts from certain licensing requirements facilities that are owned, operated, or connected to a hospital and regulated in the same way.
- Business and Commerce Code, ch. 17 defines deceptive trade practices, makes unlawful false, misleading, or deceptive acts in trade and commerce, and provides remedies.
- DIGEST:** HB 1376 would prohibit a hospital-affiliated, freestanding emergency medical care facility (freestanding ER) from advertising or holding itself out as something other than an emergency room (ER) if it charged the same rates as a hospital ER in the same region or a region with comparable rates.

The DSHS would have to adopt rules requiring a hospital-affiliated, freestanding ER to conspicuously post a notice informing potential patients that the facility was an ER and charged comparable rates. The DSHS would have to adopt rules related to these notices as soon as practicable after the effective date.

A freestanding ER not in compliance with these advertising and posting requirements would be considered a false, misleading, or deceptive practice under the Texas Deceptive Trade Practices-Consumer Protection Act. A public or private remedy available for deceptive trade practices could be used to enforce these requirements.

This bill would take effect on September 1, 2013.

**SUPPORTERS
SAY:**

HB 1376 would help prevent consumer confusion about hospital-affiliated freestanding ERs. These facilities are not attached to hospitals and look similar to urgent-care clinics, but patients are charged at hospital ER rates. As a result, consumers are receiving much higher bills than expected. By prohibiting certain advertisements and requiring conspicuous notices, this bill would make it easier for consumers to understand that they were in an emergency department and would be billed accordingly.

These regulations are necessary because current laws are insufficient to prevent consumer confusion. Notices explaining that the clinic is an ER are often written in small print and not conspicuously posted. This bill would standardize notification requirements and ensure that postings were easily readable and consumer-friendly.

**OPPONENTS
SAY:**

This bill would create unnecessary regulations because consumers are already adequately informed that they are in an ER. These facilities display signs explaining their hospital affiliations, and staff members often verbally inform a patient that the facility is an emergency department and explain potential out-of-pocket costs. Moreover, these facilities are already heavily regulated and additional regulation would make it more difficult for hospital-affiliated freestanding ERs to provide a valuable service.

**OTHER
OPPONENTS
SAY:**

HB 1376 would address only a small part of a much larger problem. The issue of consumer confusion is not limited to hospital-affiliated freestanding ERs. In Texas, there is no law defining urgent care, so a variety of entities operate freestanding clinics. These facilities are equipped for different levels of medical care and charge substantially

different rates but often look very similar to consumers. So, although HB 1376 is a step in the right direction, additional regulations are needed to prevent consumer confusion.