

**SUBJECT:** Changing disclosure requirements for freestanding ER facilities

**COMMITTEE:** Public Health — committee substitute recommended

**VOTE:** 8 ayes — S. Thompson, Frank, Guerra, Lucio, Ortega, Price, Sheffield, Zedler

0 nays

3 absent — Wray, Allison, Coleman

**WITNESSES:** For — Blake Hutson, AARP Texas; Jamie Dudensing, Texas Association of Health Plans; Stephen Schramka; (*Registered, but did not testify:* Patricia Kolodzey, Blue Cross Blue Shield of Texas; Anne Dunkelberg, Center for Public Policy Priorities; Kandice Sanaie, Cigna; Tom Forbes, Texas Academy of Family Physicians; Jessica Boston, Texas Association of Business; Clayton Stewart, Texas Medical Association; Jaime Capelo, Texas Society of Anesthesiologists)

Against — Carrie De Moor, Code 3 Emergency Partners, Texas Association of Freestanding Emergency Centers; DeAnna Gillespie, Physicians Premier ER; Rhonda Sandel, Texas Association of Freestanding Emergency Centers; Derek Guillory; Brian Murph; Daniel Roe; Elesa Stinnett; (*Registered, but did not testify:* Tucker Anderson, Code 3 Emergency Partners; Jeff Addicks, Hospitality Health ER; Steve Bresnen, Texas Association of Freestanding Emergency Centers; Jeffrey Beers)

On — Jay Woody, Legacy ER and Urgent Care; Cameron Duncan, Texas Hospital Association; (*Registered, but did not testify:* Lisa Wyman, Department of State Health Services; Kristi Jordan and Rachel Turner, Health and Human Services Commission)

**BACKGROUND:** Health and Safety Code ch. 254.001(5) defines a freestanding emergency medical care facility (freestanding ER) as a facility structurally separate and distinct from a hospital that receives an individual and provides

emergency care.

Sec. 254.155 requires freestanding ERs to post notice listing the health benefit plans in which the facility is a participating provider in the health plan's provider network or stating that the facility is not a participating provider in any network. A facility must post notice that the facility or a physician providing medical care at the facility may not be a participating provider in the patient's health plan provider network.

A facility that participates in one or more health plan provider networks also may satisfy the notice requirement by giving notice on its website listing the health plans in which the facility is a participating provider in the plan's provider network and providing to a patient written confirmation of whether the facility is a participating provider in the patient's health benefit plan provider network.

Sec. 254.205(a) authorizes the Department of State Health Services to impose an administrative penalty on licensed individuals under ch. 254 who violate this chapter or a rule or order adopted under this chapter. Collected penalties must be deposited in the state treasury in the general revenue fund. Sec. 254.205(c) establishes that the penalty amount may not exceed \$1,000 for each violation, and each day a violation continues or occurs is a separate violation. The total amount for a violation continuing or occurring on separate days may not exceed \$5,000.

Business and Commerce Code ch. 17, subch. E establishes the Texas Deceptive Trade Practices Consumer Protection Act.

**DIGEST:** CSHB 2041 would require a freestanding emergency medical care facility to comply with certain advertising regulations.

**Notice.** The bill would require a freestanding ER to post notice stating that a facility or a physician providing care at the facility may be an out-of-network provider for the patient's health benefit plan provider network. In the notice, freestanding ERs would have to list the health benefit plans in which the facility was an in-network provider or state that the facility

was an out-of-network provider for all health benefit plans. The bill would require the facility to post the notice on the facility's website home page.

The bill would allow a facility that was an in-network provider in one or more health plan provider networks to satisfy this notice requirement by giving notice on its website listing the health plans in which the facility was an in-network provider and providing to a patient written confirmation of whether the facility was an in-network provider in the patient's health benefit plan provider network.

The bill would prohibit a freestanding ER from adding to or altering the language in the required notice.

**Disclosure statement.** CSHB 2041 would require a freestanding ER to provide to a patient or a patient's legally authorized representative a written disclosure statement, which would be updated annually, that listed:

- the facility's observation and facility fees that may result from the patient's visit; and
- the health benefit plans in which the facility was a network provider in the health plan's provider network or states that the facility was an out-of-network provider for all health benefit plans.

The bill would require the statement to include, as applicable:

- the freestanding ER's median observation and facility fees;
- a range of possible observation and facility fees; and
- the observation and facility fees for each level of care.

The disclosure statement would have to include the facility's name and contact information and a place for the patient or patient's representative and facility employee to sign and date. Under the bill, the disclosure statement could include information on the facility's procedures for seeking reimbursement from the patient's health plan.

A freestanding ER would have to retain a copy of signed disclosure statements until one year after the disclosure was signed.

The bill would prohibit a freestanding ER from adding to or altering information included in the required statement.

The bill would allow a facility to satisfy these disclosure statement requirements by posting its standard charges on the facility's website that was easily accessible and readable. The facility would have to at least annually post updated standard charges on its website

**Prohibited advertising.** The bill would prohibit a freestanding ER from advertising or holding 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 was a network provider of a health plan issuer. The bill also would prohibit a facility from posting the name or logo of a health plan issuer in any signage or marketing materials if the facility was an out-of-network provider for any of the issuer's plans.

The bill would establish that violations of these advertising provisions were actionable under the Texas Deceptive Trade Practices Consumer Protections Act.

**Penalty.** CSHB 2041 would remove the \$5,000 penalty cap for violations under Health and Safety Code ch. 254 continuing or occurring on separate days. Under the bill, each day of a continuing violation could be considered a separate violation for imposing a penalty. The bill would require administrative penalties collected by the Department of State Health Services to be deposited in the state treasury to the credit of the freestanding emergency medical care facility licensing fund.

The bill would take effect September 1, 2019.

SUPPORTERS  
SAY:

CSHB 2041 would help prevent surprise medical bills by requiring freestanding ERs to disclose their facility fees and clarify their health plan

network status to patients in advance. Some freestanding ERs engage in misleading marketing practices by telling patients they accept a patient's insurance even though the facility is out-of-network. The bill is narrow in scope because a large majority of all out-of-network emergency facility claims in Texas originate from freestanding ERs. Many consumers are unaware of the cost differences between different emergency facilities and have little recourse when they receive bills they cannot afford to pay, which could affect their credit rating or lead to bankruptcy. The bill is necessary to increase price transparency and educate patients about a facility's network status and fees.

The bill also would increase enforcement mechanisms by removing the \$5,000 penalty cap the Department of State Health Services could administer for violations continuing or occurring on separate days.

**OPPONENTS  
SAY:**

CSHB 2041 could delay a patient's treatment by requiring freestanding ERs to disclose their facility fees in advance. This could force a patient to make health care decisions based on their finances rather than on the perceived medical emergency before them, potentially endangering their lives. Patients should not be afraid to receive health care because of costs.

**OTHER  
OPPONENTS  
SAY:**

CSHB 2041 should apply the disclosure requirements to all emergency facilities, especially hospitals, which often contract with doctors and other health providers who are out-of-network.

**NOTES:**

According to the Legislative Budget Board, the bill would have a negative impact of about \$879,000 on general revenue related funds through fiscal 2020-21, increasing to \$1.3 million in subsequent biennia.