

## **BILL ANALYSIS**

Senate Research Center

S.B. 2038  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

At the beginning of the pandemic, COVID-19 tests were heavily sought after by Texans. During this time, many Texans went to freestanding emergency rooms (ERs) to take these tests, as these facilities advertised that they would get results within 48 hours. What they did not expect was the high cost of the test, when they received their bill. There have been numerous articles documenting freestanding ERs charging insurance companies thousands of dollars for administering a COVID-19 test. One freestanding ER billed a Houston woman \$2,500 for her son's drive-through test. The test itself was only \$175, but the facility tacked on \$2,300 in unnecessarily high facility, physician, and observation fees.

While freestanding ERs are emergency facilities and treat patients for these situations, they are not required to treat patients who are clearly not experiencing an emergency. These facilities have the ability to charge whatever they choose for facility and physician fees, which means they are actively choosing to bill COVID-19 patients exorbitant amounts during a pandemic. While these costs are not coming directly out of the consumer's pocket immediately, they eventually will. When insurance companies are paying these high prices, which they are required to do during the pandemic, all of these costs will get wrapped back into premiums, raising them for everyone. This also contributes to the rising cost of healthcare overall, which is troublesome during a pandemic. At a time when people are worried about surprise medical bills, many Texans may think they need to cover these costs and do something drastic like take out a loan. To charge these kinds of costs during a pandemic, especially for a service that will help make people aware they have COVID-19, is extremely unnecessary and hurting the people of Texas.

This bill would address price gouging by freestanding ERs by prohibiting a freestanding ER from charging a facility, observation, or provider fee for testing or vaccinating from their vehicle. The bill would also prohibit freestanding ERs from charging a price that is unconscionable during a declared state of disaster. If a freestanding ER does price gouge, this bill would have the Health and Human Services Commission impose administrative penalties and an eventual revocation of license.

In between testing and vaccination along with facility fee and observation fee, S.B 2038 will be replacing the "and" with an "or." It will also add in clarifying language that freestanding ERs are not allowed to provide non-emergency care.

(Original Author's / Sponsor's Statement of Intent)

S.B. 2038 amends current law relating to prices and fees charged by certain freestanding emergency medical care facilities, including prices and fees charged during a declared state of disaster; and provides administrative penalties.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 241, Health and Safety Code, by adding Subchapter I-1, as follows:

**SUBCHAPTER I-1. PRICES AND FEES CHARGED BY FREESTANDING EMERGENCY MEDICAL CARE FACILITIES ASSOCIATED WITH CERTAIN HOSPITALS**

Sec. 241.221. **APPLICABILITY.** (a) Provides that this subchapter applies only to a freestanding emergency medical care facility, as that term is defined by Section 254.001 (Definitions), that is:

(1) exempt from the licensing requirements of Chapter 254 (Freestanding Emergency Medical Care Facilities) under Section 254.052(5), (7), or (8) (relating to an exemption from licensing requirements for state hospitals and certain facilities located within or connected to, or owned or operated by, a licensed hospital or nursing home); and

(2) associated with a hospital licensed under Chapter 241 (Hospitals) that does not meet the conditions of participation for certification under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.).

(b) Provides that this subchapter does not apply to a freestanding emergency medical care facility associated with a hospital licensed under Chapter 241 that has been operating as a hospital for less than one year, that has submitted an application to a federally recognized accreditation program for certification under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.), and that has not failed an accreditation for certification.

Sec. 241.222. **CERTAIN FEES PROHIBITED.** (a) Prohibits a facility described by Section 241.221 that provides a health care service, including testing or vaccination, to an individual accessing the service from the individual's vehicle from charging the individual or a third-party payor a facility or observation fee.

(b) Prohibits this section from being construed as expanding the type of health care services a facility described by Section 241.221 is authorized to provide.

Sec. 241.223. **DISCLOSURE OF CERTAIN PRICES AND FEES DURING DECLARED DISASTER; CONSTRUCTION.** (a) Requires a facility described by Section 241.221 that provides testing or vaccination for an infectious disease for which a state of disaster has been declared under Chapter 418 (Emergency Management), Government Code, to disclose to each patient the prices 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 (Disclosure Statement Required), as added by Chapter 1093 (H.B. 2041), Acts of the 86th Legislature, Regular Session, 2019.

(b) Prohibits this section from being construed as expanding the type of health care services a facility described by Section 241.221 is authorized to provide.

Sec. 241.224. **PROHIBITED PRICING PRACTICES DURING DECLARED STATE OF DISASTER.** (a) Defines "unconscionable price."

(b) Prohibits a facility described by Section 241.221, during a state of disaster declared by the governor under Chapter 418, Government Code, from:

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

(2) knowingly or intentionally charging 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) Provides that Subsection (b)(2) does not prohibit a facility described by Section 241.221 from offering an uninsured individual a cash discount for a particular product or service, or from 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.

Sec. 241.225. ENFORCEMENT. Requires the Health and Human Services Commission (HHSC), notwithstanding any conflicting provision in this subchapter and except for good cause shown, to impose the following penalty on a person licensed under this chapter who violates Section 241.224 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.

SECTION 2. Amends Subchapter D, Chapter 254, Health and Safety Code, by adding Sections 254.1555 and 254.1556, as follows:

Sec. 254.1555. CERTAIN FEES PROHIBITED. (a) Prohibits a facility that provides a health care service, including testing or vaccination, to an individual accessing the service from the individual's vehicle from charging the individual or a third-party payor a facility or observation fee.

(b) Prohibits this section from being construed as expanding the type of health care services a facility is authorized to provide under Chapter 254.

Sec. 254.1556. DISCLOSURE OF CERTAIN PRICES AND FEES DURING DECLARED DISASTER; CONSTRUCTION. (a) Requires 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, to 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) Prohibits this section from being construed as expanding the type of health care services a facility is authorized to provide under Chapter 254.

SECTION 3. Amends Subchapter D, Chapter 254, Health and Safety Code, by adding Section 254.160, as follows:

Sec. 254.160. PROHIBITED PRICING PRACTICES DURING DECLARED STATE OF DISASTER. (a) Defines "unconscionable price."

(b) Prohibits a facility, during a state of disaster declared by the governor under Chapter 418, Government Code, from:

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

(2) knowingly or intentionally charging 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) Provides that 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.

SECTION 4. Amends Subchapter E, Chapter 254, Health and Safety Code, by adding Section 254.207, as follows:

Sec. 254.207. ENFORCEMENT. Requires HHSC, notwithstanding any conflicting provision in Subchapter E (Enforcement and Penalties) and except for good cause shown, to impose the following on a person licensed under Chapter 254 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, an administrative penalty in an amount equal to \$50,000 and a suspension of the person's license for 30 days; and

(3) for the third violation, a permanent revocation of the person's license.

SECTION 5. Effective date: September 1, 2021.