

BILL ANALYSIS

C.S.H.B. 1357
By: Isett
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Over the last decade, new types of medical facilities have been established to address a part of the health care market currently lacking services, namely freestanding emergency medical care. A lack of regulation means there is no way of knowing how many of these facilities exist, although it is estimated there are approximately 40 in Texas. While these facilities are diverse in size and practice, none are currently regulated by the state in a manner consistent with other health care facilities. This has led to a recent Legislative Budget Board recommendation that freestanding emergency medical care facilities be regulated.

C.S.H.B. 1357 creates a license and regulatory scheme for freestanding emergency medical care facilities.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTIONS 1 and 6 of this bill.

ANALYSIS

C.S.H.B. 1357 amends the Health and Safety Code to create a freestanding emergency medical care facility license. The bill defines "freestanding emergency medical care facility" to mean a facility, structurally separate and distinct from a hospital and not affiliated with a hospital licensed under the Texas Hospital Licensing Law, that receives an individual and provides medical treatment or stabilization to the individual in an emergency or for a condition that requires immediate medical care. The bill exempts from the licensing requirements for a facility an office or clinic owned and operated by a manufacturing facility solely for the purposes of treating its employees and contractors; temporary emergency clinics in disaster areas; an office or clinic of a licensed physician, dentist, or podiatrist; a licensed nursing home; a licensed hospital; or a licensed ambulatory surgical center. The bill requires each freestanding emergency medical care facility to have a separate license and provides that licenses are not transferable or assignable. The bill prohibits a facility or person, except those exempted facilities, from holding itself out to the public as an emergency medical facility or from using any similar term defined by Department of State Health Services (DSHS) rule that would give the impression that the facility or person is providing emergency medical care treatment unless the facility or person holds a license issued under the provisions of the bill. The bill makes the use of the term "emergency" or a similar term also subject to certain prohibitions against facilities not in continuous operation. The bill requires the executive commissioner of the Health and Human Services Commission (HHSC) by rule to establish a classification and license for a facility that is in continuous operation 24 hours per day and 7 days per week. The bill adds a temporary provision set to expire August 31, 2013, that requires the executive commissioner by rule to establish a classification and license for a facility that is not in continuous operation, and that prohibits the minimum operating hours of such a licensed facility from being less than 7 days each week and 12 hours each day. The bill establishes that any rules adopted under that temporary provision expire with the expiration of that provision. The bill defines "department,"

"emergency care," "executive commissioner," and "facility."

C.S.H.B. 1357 establishes procedures for license application, issuance, denial, suspension, probation, and revocation. The bill provides for the emergency suspension of a license and injunction for a violation of licensing requirements. The bill provides for facility inspection, fees, and the freestanding emergency medical care facility licensing fund.

C.S.H.B. 1357 requires the executive commissioner to adopt the rules necessary to implement the licensing requirements and requires the rules to contain minimum standards applicable to a facility relating to the facility's construction and design, professional staff and other personnel, administration, equipment, sanitation and hygiene, medical records, minimal level of care and standards for denial of care, provision of laboratory and radiological services, distribution and administration of drugs, and a quality assurance program for patient care.

C.S.H.B. 1357 adds a temporary provision set to expire August 31, 2013, that requires a facility not in continuous operation to display a clearly visible sign indicating whether the facility is open or closed; providing information regarding the facility's operating hours; and providing clear instructions directing a patient to an emergency room in a licensed hospital or to a freestanding emergency room classified as a facility in continuous operation within 10 miles of the facility not in continuous operation. The bill prohibits a facility not continually operating from advertising, marketing, or otherwise promoting the services provided by that facility using the term "emergency" or any similar term defined by DSHS rule. The bill adds a temporary provision set to expire January 1, 2013, that establishes that a facility not in continuous operation is not required to comply with that prohibition until the earlier of the second anniversary of the date the facility is issued a license under the bill's provisions or September 1, 2012.

C.S.H.B. 1357 requires a facility to provide to each facility patient, without regard to the individual's ability to pay, an appropriate medical screening examination within the facility's capability, including ancillary services routinely available to the facility, to determine whether an emergency medical condition exists.

C.S.H.B. 1357 makes it a Class C misdemeanor for a person to establish or operate a facility without the required license and provides for a continuing violation. The bill provides for the imposition of an administrative penalty in an amount not to exceed \$1,000 for each violation and limits the total amount of the penalty assessed for a continuing violation to \$5,000. The bill sets out the criteria on which the amount of the penalty assessed is to be based, establishes procedures for an administrative hearing to determine the occurrence of a violation, the amount of the penalty, or both, and provides for payment and collection of the penalty and judicial review of an order relating to any penalty and violation.

C.S.H.B. 1357 amends the Insurance Code to define "freestanding emergency medical care facility" and expand the definition of "emergency care" under provisions relating to health maintenance organizations and preferred provider benefit plans to include services provided in freestanding emergency medical care facilities. The bill adds services originating in a freestanding emergency medical care facility to the types of emergency care for which a health care plan of a health care maintenance organization is required to provide coverage. The bill adds services originating in a freestanding emergency medical care facility to the services for which an insurer is required to provide reimbursement until the insured can reasonably be expected to transfer to a preferred provider if the insured cannot reasonably reach a preferred provider.

C.S.H.B. 1357 requires a freestanding emergency medical care facility to obtain a license not later than September 1, 2010. The bill requires the executive commissioner of HHSC to adopt required rules not later than March 1, 2010. The bill makes provisions relating to coverage by a health maintenance organization or a preferred provider benefit plan for services provided by a freestanding emergency medical care facility applicable only to a health insurance policy or

evidence of coverage delivered, issued for delivery, or renewed on or after March 1, 2010. The bill prohibits DSHS from issuing a license to a facility not in continuous operation with a license term that extends beyond August 31, 2013. The bill makes provisions relating to the denial, suspension, probation, revocation, or emergency suspension of a license, injunction, and the imposition, payment, collection, and judicial review of an administrative penalty effective March 1, 2010. The bill makes provisions relating to a criminal penalty effective September 1, 2010.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1357 differs from the original by changing the definition of a "freestanding emergency medical care facility" to specify that such a facility receives an individual and provides medical treatment or stabilization to the individual in an emergency or for a condition that requires immediate medical care, rather than providing limited emergency care and limited services for the treatment of a medical emergency as in the original. The substitute adds provisions not in the original prohibiting a facility or person from holding itself out to the public as an emergency medical facility, or similar, unless that facility or person holds a license issued under the bill's provisions, and provisions relating to the limited use of the term "emergency." The substitute adds provisions not in the original requiring the executive commissioner of the Health and Human Services Commission to establish by rule a classification and license for a facility in continuous operation and a facility not in continuous operation and setting forth the minimum operating hours of a noncontinuously operating facility.

C.S.H.B. 1357 adds provisions not in the original adding to those facilities exempt from the licensing requirement under the bill an office or clinic owned or operated by a manufacturing facility solely for the purposes of treating its employees and contractors and temporary emergency clinics in disaster areas. The substitute adds temporary provisions not in the original establishing certain requirements of and prohibitions against a facility not in continuous operation. The substitute adds a provision not in the original requiring a facility to provide certain care to each facility patient, without regard to the individual's ability to pay. The substitute adds a provision not in the original prohibiting the Department of State Health Services from issuing a license to a facility not in continuous operation with a license term extending beyond the expiration of provisions regarding such a facility. The substitute differs from the original by making nonsubstantive formatting changes.