LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 27, 2009

TO: Honorable Lois W. Kolkhorst, Chair, House Committee on Public Health

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB1357** by Isett (Relating to regulation of freestanding emergency medical care facilities; providing an administrative penalty; creating an offense.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1357, Committee Report 1st House, Substituted: an impact of $0 through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	$0
2011	$0
2012	$0
2013	$0
2014	$0

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from *New General Revenue Dedicated: Freestanding Emergency Medical Care Facility Licensing Fund*	Probable Revenue Gain from *New General Revenue Dedicated: Freestanding Emergency Medical Care Facility Licensing Fund*
2010	($472,653)	$559,250
2011	($181,992)	$231,125
2012	($181,992)	$231,125
2013	($181,992)	$231,125
2014	($181,992)	$231,125

Fiscal Analysis

The bill would add Chapter 254, Freestanding Emergency Medical Care Facilities, to the Health and Safety Code. It would define a freestanding emergency medical facility and prohibit establishment or operation of a facility without a license. It would prevent a facility from holding itself out to the public as an emergency medical facility unless it holds a license. The bill would require the Executive Commissioner of the Health and Human Services Commission (HHSC) by rule to establish a classification and a license for a facility that is in continuous operation 24 hours per day and 7 days per week and for a facility that is not in continuous operation but is in operation at least 12 hours per day. The subsection and rules pertaining to facilities not in continuous operation would expire August 31, 2013.

The Department of State Health Services (DSHS) would be required to issue a license by September 1, 2010, if after inspection and investigation, it finds the applicant and facility meet the requirements and standards. DSHS would be allowed to inspect a facility to ensure compliance.

The bill would require that the licensing fee be paid annually on renewal of the license. The Executive Commissioner would be required to set fees in amounts reasonable and necessary to defray the cost of administration. The bill would require that fees be deposited in the State Treasury to the credit of the freestanding emergency medical care facility licensing fund and may be appropriated to the department only to administer and enforce this chapter.

The Executive Commissioner would be required to adopt rules by March 1, 2010 to implement the chapter including requirements for the issuance, renewal, denial, suspension, and revocation of a license, and minimum standards applicable to a facility.

The bill would allow DSHS to deny, suspend, or revoke a license including through the use of an emergency suspension for a violation of the chapter or a rule, and would require these actions and the appeal to be governed by the procedures for a contested case hearing under Chapter 2001, Government Code, Administrative Procedure.

The bill would allow DSHS to petition a district court for a temporary restraining order against a freestanding emergency medical care facility. At DSHS' request, the Office of the Attorney General (OAG) would be required to institute and conduct a suit.

The bill would create a criminal penalty of a Class C misdemeanor for a person that establishes or operates a freestanding emergency medical care facility without a license. The bill would provide for administrative penalties. Proceedings to impose the penalty would be considered to be a contested case under Chapter 2001. If the person requests a hearing, DSHS would be required to refer the matter to the State Office of Administrative Hearings (SOAH) to conduct the hearing.

The bill would amend the Insurance Code to include a freestanding emergency medical care facility or comparable emergency facility in the list of facilities providing emergency care and require specified carriers to provide coverage of emergency care services provided in freestanding emergency medical care facilities or comparable emergency facilities or to provide reimbursement to a freestanding emergency medical care facility at preferred rates until a patient transfer.

Methodology

This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in the bill would be subject to funds consolidation review by the current Legislature.

This analysis assumes the costs associated with adopting rules to regulate freestanding emergency medical care facilities could be absorbed by HHSC within existing resources.

DSHS assumes it would license 75 freestanding emergency care facilities. DSHS indicates there is no historical data to determine how many facilities would operate continuously and how many would operate fewer than 24 hours per day. DSHS indicates it would begin inspections on March 1, 2010. To inspect and license facilities by September 1, 2010, DSHS indicates it would be required to hire a total of 6 new staff members during fiscal year 2010 including 4 nurses, 1 architect, and 1 administrative assistant. To conduct complaint investigations and resurveys in fiscal year 2011 and in future years, DSHS indicates it would require 2.5 Full-Time Equivalents including 1 nurse, 0.5 architect, and 1 administrative assistant. Total staffing costs including travel for on-site inspections are $449,153 in fiscal year 2010, and $178,492 in fiscal year 2011 and in future years. Staffing costs are phased-in for fiscal year 2010.

DSHS indicates it will need to make a modification to its existing Health Facility Licensing integrated system to include the new license type and functions associated with the license, and that the modification will involve a one-time cost in fiscal year 2010 of $20,000 (200 hours of contracted programming at $100 per hour).

SOAH reports that based on the estimated number of referrals, work could be absorbed within existing resources. However, because SOAH does not receive General Revenue for work performed for DSHS, it would bill DSHS at a rate of $100 per hour. DSHS indicates one case would be referred annually, at a cost of $3,500. The cost to DSHS and revenue gain to SOAH result in a net neutral fiscal impact.

The bill would allow DSHS to charge a fee for a license to operate a freestanding emergency care facility. DSHS assumes the same fee would be charged for facilities that operate continuously and facilities that do not operate continuously. Because the bill does not specify the amount of the fee, the Comptroller of Public Accounts could not estimate the revenue gain. However, if an initial licensing fee of $7,410 and a renewal fee of $3,035 were charged and 75 facilities were licensed as assumed by DSHS, the estimated annual revenue gain would be $555,750 in fiscal year 2010 and $227,625 in fiscal year 2011 and subsequent years in General Revenue-Dedicated Funds. Since the bill would require DSHS to generate revenues sufficient to cover the costs of regulation, this analysis assumes that the agency would adjust fees as necessary to cover any additional costs associated with the implementation of this bill.

OAG anticipates any legal work resulting from the passage of the bill, including additional complaints, investigations, or cases, could be reasonably absorbed within existing resources.

Based on the analysis of the Texas Department of Insurance (TDI), it is assumed that there would be a one-time revenue gain of $11,500 in the General Revenue Dedicated Account Fund 36 in fiscal year 2010 because the bill would result in additional form filings. Since General Revenue Dedicated Account Fund 36 is a self-leveling account, this analysis assumes all revenue generated would go toward fund balances or the maintenance tax would be set to recover a lower level of revenue the following year. It is also assumed that any costs realized by TDI from implementing the provisions of the bill could be absorbed within existing resources.

Technology

In costs included above, DSHS indicates it will need to make a one-time modification to its existing Health Facility Licensing integrated system at a cost of $20,000 in fiscal year 2010.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 360 State Office of Administrative Hearings, 454 Department of Insurance, 529 Health and Human Services Commission, 537 State Health Services, Department of

LBB Staff: JOB, CL, JI, LL