

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

March 30, 2009

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

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

IN RE: HB2183 by Zerwas (Relating to the regulation of independent freestanding emergency medical care facilities and urgent care clinics; providing penalties; creating an offense.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2183, As Introduced: a positive impact of \$20,621 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 | (\$186,641) |
| 2011 | \$207,262 |
| 2012 | \$202,262 |
| 2013 | \$207,262 |
| 2014 | \$202,262 |

All Funds, Five-Year Impact:

| Fiscal Year | Probable Savings/(Cost) from <i>General Revenue Fund</i> 1 | Probable Revenue Gain from <i>General Revenue Fund</i> 1 |
|-------------|--|--|
| 2010 | (\$1,707,641) | \$1,521,000 |
| 2011 | (\$811,238) | \$1,018,500 |
| 2012 | (\$811,238) | \$1,013,500 |
| 2013 | (\$811,238) | \$1,018,500 |
| 2014 | (\$811,238) | \$1,013,500 |

Fiscal Analysis

The bill would implement recommendations in the Legislative Budget Board *Government Effectiveness and Efficiency Report* to the Eighty-first Legislature entitled, "Regulate Emergency Care Facilities to Standardize Quality of Care."

The bill would add Chapter 254, Independent Freestanding Emergency Medical Care and Urgent Care Facilities, to the Health and Safety Code. The bill would define independent freestanding emergency medical care facilities and urgent care clinics, and prohibit establishment or operation of a facility without a license after September 1, 2010. The bill would require DSHS to issue a license, if after inspection and investigation, it finds the applicant and the facility meet the requirements of the chapter. The bill would allow DSHS to inspect a facility as needed. The Executive Commissioner of

the Health and Human Services Commission (HHSC) would be required by March 1, 2010 to adopt rules for the regulation of each facility type and would be required to set fees in amounts necessary to defray the cost of administering the chapter. The fees would be deposited in the General Revenue Fund and may be appropriated to DSHS only to administer and enforce the chapter.

The bill would allow a person to file a complaint with DSHS against a licensed facility. The bill would enable 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 to be governed by the procedures for a contested case hearing under Chapter 2001, Government Code, Administrative Procedure.

Under the bill, DSHS could petition a district court for a temporary restraining order to restrain containing violation of the standards/licensing requirements. As DSHS' request, the Office of Attorney General (OAG) would be required to institute and conduct a suit.

The bill would provide for administrative penalties. Proceedings to impose a 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 make the establishment or operation of an independent freestanding emergency medical care facility or urgent care clinic without a license a misdemeanor. The bill would provide civil penalties for violation of the chapter or a rule adopted under the chapter, with each day of the violation constituting a separate violation. The OAG may bring suit to recover a civil penalty under this section.

The bill would also amend the Insurance Code to define an independent freestanding emergency medical care facility in the Insurance Code and require specified carriers to provide coverage or reimbursement for medically necessary or emergency care services provided to an enrollee by an independent freestanding emergency medical care facility. A health benefit plan is required to issue enrolled individuals a written notice of coverage.

Methodology

HHSC indicates rulemaking costs can be absorbed within existing resources.

DSHS assumes it would license 75 independent freestanding emergency medical care facilities and 300 urgent care clinics. DSHS indicates it would begin inspections on March 1, 2010 to enable licensure by September 1, 2010. DSHS indicates it would be required to hire a total of 21 new staff members during fiscal year 2010 including 12 nurses, 6 architects, 1 program specialist, and 2 administrative assistants. To conduct complaint investigations and resurveys in fiscal year 2011 and in future years, DSHS indicates it would require 10 Full-Time Equivalents including 6 nurses, 2 architects, 1 program specialist, and 1 administrative assistant. The total staffing costs including travel for on-site inspections are \$1,684,141 in fiscal year 2010, and \$807,738 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 an independent freestanding emergency medical care facility and an urgent care clinic. 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 annual one-year licensing fee of \$2,500 and two-year licensing fee of \$5,000 were set for independent freestanding emergency medical care facilities, and a \$2,750 one-year licensing fee and

\$5,500 two-year licensing fee were set for urgent care clinics to enable staggering of future license issuances, and a total of 75 and 300 facilities were regulated, respectively, as assumed by DSHS, the estimated annual revenue gain would be \$1,517,500 in General Revenue in fiscal year 2010, \$1,015,000 in fiscal years 2011 and 2013, and \$1,010,000 in fiscal years 2012 and 2014. 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.

It is assumed any legal work resulting from the passage of the bill, including additional complaints, investigations, or cases, could be reasonably absorbed by OAG 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 \$33,700 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 would 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 (200 hours of contracted programming at \$100 per hour).

Local Government Impact

The bill would require a local governmental entity that offers health and accident insurance coverage provided by a risk pool to provide coverage for medically necessary services to an enrollee by an independent freestanding emergency medical care facility. An issuer of a health benefit plan must provide written notice of the required coverage to individuals enrolled in the plan. The costs to local governmental entities would depend on the number of local entities that provide risk pools, and the number of enrollees that require medically necessary services at an independent freestanding emergency medical care facility.

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

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