

BILL ANALYSIS

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S.B. 1549
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Business & Commerce
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Having access to affordable health care is important, but certain facilities are taking advantage of people when they are most vulnerable and charging rates that are beyond appropriate. This bill targets bad acting freestanding emergency rooms by cracking down on misleading information and inappropriate billing.

Key provisions of S.B. 1549:

- Gives the attorney general consumer protection division the authority to take action against emergency care facilities that charge unconscionable rates.
- Prohibits any emergency facility from charging a facility fee if they treat someone for a non-emergency.
- Increases the penalty cap on freestanding emergency rooms from \$5,000 to \$25,000.
- Modifies freestanding emergency room disclosure language to use "in-network" and "out-of-network," instead of "participating provider."
- Requires the disclosures described in Subchapter J, Chapter 241, Health and Safety Code, to be displayed on the front page of the facilities' website in large font with contrasting colors.
- Prohibits facilities from using misleading language regarding whether a facility is in-network or out-of-network.
- Prohibits freestanding ER facilities from listing the names of insurance companies or logos on their websites if they are not currently in-network with that insurance carrier.

Requires out-of-network freestanding ER facilities to get a signed disclosure from patients at check-in (when medically possible). The disclosure must list the possible range of facilities fees and observation fees.

As proposed, S.B. 1549 amends current law relating to the regulation of certain emergency care facilities.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas attorney general in SECTION 1 (Section 17.464, Business & Commerce Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter E, Chapter 17, Business & Commerce Code, by adding Section 17.464, as follows:

Sec. 17.464. UNCONSCIONABLE PRICE FOR CARE AT EMERGENCY CARE FACILITY. (a) Defines "emergency care," "emergency care facility," and "freestanding emergency medical care facility" for purposes of this section.

(b) Defines "false, misleading, or deceptive acts or practices" for purposes of Section 17.46(a) (relating to false, misleading, or deceptive acts in trade or commerce being unlawful).

(c) Prohibits the consumer protection division from bringing an action under Section 17.47 (Restraining Orders) for an act or practice described by Subsection (b) if the price alleged to be unconscionable is less than 150 percent of the average charge for the same or substantially similar care provided to other individuals by a hospital emergency room according to data collected under Chapter 108 (Health Care Data Collection), Health and Safety Code, and made available to the division, except as provided by Subsection (d).

(d) Authorizes the Texas attorney general (attorney general), if the attorney general determines that the consumer protection division is unable to obtain the charge data described by Subsection (c), to adopt rules designating another source of hospital charge data for use by the division in establishing the average charge for emergency or other care provided by hospital emergency rooms for purposes of Subsection (c).

(e) Authorizes the consumer protection division, in an action brought under Section 17.47 to enforce this section, to request, and authorizes the trier of fact to award the recovery of reasonable attorney's fees and court costs and the reasonable expenses incurred by the division in obtaining any remedy available under Section 17.47, including the cost of investigation, witness fees, and deposition expenses.

(f) Provides that this section does not create a private cause of action for a false, misleading, or deceptive act or practice described by Subsection (b).

SECTION 2. Amends Sections 241.252(b), (c), and (e), Health and Safety Code, as follows:

(b) Requires a facility described by Section 241.251 (Applicability) to post notice that:

(1) states:

(A) makes no changes to this paragraph;

(B) the facility charges rates comparable to a hospital emergency room, rather than the facility charges rates comparable to a hospital emergency room and may charge a facility fee;

(C) a facility or a physician providing medical care at the facility is authorized to be an out-of-network provider for the patient's health benefit plan provider network, rather than a facility or a physician providing medical care at the facility is prohibited from being a participating provider in the patient's health benefit plan provider network; and

(D) makes no changes to this paragraph; and

(2) either:

(A) lists the health benefit plans in which the facility is a network provider, rather than participating provider, in the health benefit plan's provider network; or

(B) states the facility is an out-of-network provider for any health benefit plan provider network, rather than states the facility is not a participating provider in any health benefit plan provider network.

(c) Requires the notice required by this section to be posted prominently and conspicuously in certain locations, including on the home page of the facility's Internet website in a font that is larger than and contrasts with the font on the remainder of the page.

(e) Makes conforming changes to this subsection.

SECTION 3. Amends Sections 254.155(a), (b), and (d), Health and Safety Code, to make conforming changes.

SECTION 4. Amends Subchapter D, Chapter 254, Health and Safety Code, by adding Section 254.156, as follows:

Sec. 254.156. REQUIREMENTS AND RESTRICTIONS ON OUT-OF-NETWORK FACILITIES. (a) Prohibits a facility from posting the name or logo of a health benefit plan issuer on the facility's Internet website if the facility is an out-of-network provider for any of the issuer's health benefit plans.

(b) Requires a facility on a patient's arrival at the facility, if the facility is an out-of-network provider for the patient's health benefit plan provider network, to:

(1) provide to the patient or the patient's legally authorized representative a written disclosure statement that outlines the range of fees, including facility and observation fees, that may result from the patient's visit; and

(2) obtain the signature of the patient or the patient's legally authorized representative on the disclosure statement described by Subdivision (1) before providing health care services to the patient unless the patient's medical condition requires immediate medical intervention.

SECTION 5. Amends Section 254.205(c), Health and Safety Code, as follows:

(c) Provides that each day a violation continues or occurs is a separate violation for purposes of imposing a penalty, rather than prohibiting the amount of the penalty from exceeding \$1,000 for each violation, and provides that each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. Prohibits the total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection from exceeding \$25,000, rather than \$5,000.

SECTION 6. Amends Subtitle B, Title 4, Health and Safety Code, by adding Chapter 260B, as follows:

CHAPTER 260B. EMERGENCY CARE FACILITIES

Sec. 260B.0001. DEFINITIONS. Defines "emergency care," "emergency care facility," and "freestanding emergency medical care facility" for purposes of this chapter.

Sec. 260B.0002. FACILITY FEE PROHIBITED. Prohibits an emergency care facility from charging a patient who receives nonemergency health care services a facility fee.

Sec. 260B.0003. DISSEMINATION OF CERTAIN FALSE OR MISLEADING INFORMATION PROHIBITED. Prohibits an emergency care facility from posting on the facility's Internet website or disseminating by any method false or misleading information on whether the facility is a network provider in a health benefit plan provider network.

SECTION 7. Effective date: September 1, 2019.