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H.B. No. 2041

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of freestanding emergency medical care facilities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 108.002(10), Health and Safety Code, is amended to read as follows:

(10) "Health care facility" means:

(A) a hospital;

(B) an ambulatory surgical center licensed under Chapter 243;

(C) a chemical dependency treatment facility licensed under Chapter 464;

(D) a renal dialysis facility;

(E) a birthing center;

(F) a rural health clinic;

(G) a federally qualified health center as defined by 42 U.S.C. Section 1396d(1)(2)(B); ~~or~~

(H) a freestanding ~~[free-standing]~~ imaging center; or

(I) a freestanding emergency medical care facility, as defined by Section 254.001, including a freestanding emergency medical care facility that is exempt from the licensing requirements of Chapter 254 under Section 254.052(8).

SECTION 2. Section 241.202, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 241.202. ADVERTISING. A facility described by Section
3 [241.201](#):

4 (1) may not advertise or hold itself out as a medical
5 office, facility, or provider other than an emergency room if the
6 facility charges for its services the usual and customary rate
7 charged for the same service by a hospital emergency room in the
8 same region of the state or located in a region of the state with
9 comparable rates for emergency health care services; and

10 (2) must comply with the regulations in Section
11 254.157.

12 SECTION 3. Subchapter I, Chapter [241](#), Health and Safety
13 Code, is amended by adding Section 241.205 to read as follows:

14 Sec. 241.205. DISCLOSURE STATEMENT REQUIRED. A facility
15 described by Section [241.201](#) shall comply with Section 254.156.

16 SECTION 4. Section [254.104](#), Health and Safety Code, is
17 amended to read as follows:

18 Sec. 254.104. FREESTANDING EMERGENCY MEDICAL CARE FACILITY
19 LICENSING FUND. All fees and administrative penalties collected
20 under this chapter shall be deposited in the state treasury to the
21 credit of the freestanding emergency medical care facility
22 licensing fund and may be appropriated to the department only to
23 administer and enforce this chapter.

24 SECTION 5. Section [254.155](#), Health and Safety Code, is
25 amended by amending Subsections (a), (b), and (d) and adding
26 Subsection (e) to read as follows:

27 (a) A facility shall post notice that:

1 (1) states:

2 (A) the facility is a freestanding emergency
3 medical care facility;

4 (B) the facility charges rates comparable to a
5 hospital emergency room and may charge a facility fee;

6 (C) a facility or a physician providing medical
7 care at the facility may ~~[not]~~ be an out-of-network [~~a~~
8 ~~participating~~] provider for [~~in~~] the patient's health benefit plan
9 provider network; and

10 (D) a physician providing medical care at the
11 facility may bill separately from the facility for the medical care
12 provided to a patient; and

13 (2) either:

14 (A) lists the health benefit plans in which the
15 facility is an in-network [~~a participating~~] provider in the health
16 benefit plan's provider network; or

17 (B) states the facility is an out-of-network [~~not~~
18 ~~a participating~~] provider for all [~~in any~~] health benefit plans
19 [~~plan provider network~~].

20 (b) The notice required by this section must be posted
21 prominently and conspicuously:

22 (1) at the primary entrance to the facility;

23 (2) in each patient treatment room;

24 (3) at each location within the facility at which a
25 person pays for health care services; and

26 (4) on the home page of the facility's Internet website
27 or on a different page available through a hyperlink that is:

1 (A) entitled "Insurance Information"; and

2 (B) located prominently on the home page.

3 (d) Notwithstanding Subsection (b), a facility that is an
4 in-network [~~a participating~~] provider in one or more health benefit
5 plan provider networks complies with Subsection (a)(2) if the
6 facility:

7 (1) provides notice on the facility's Internet website
8 listing the health benefit plans in which the facility is an
9 in-network [~~a participating~~] provider in the health benefit plan's
10 provider network; and

11 (2) provides to a patient written confirmation of
12 whether the facility is an in-network [~~a participating~~] provider in
13 the patient's health benefit plan's provider network.

14 (e) A facility may not add to or alter the language of a
15 notice required by this section.

16 SECTION 6. Subchapter D, Chapter 254, Health and Safety
17 Code, is amended by adding Sections 254.156, 254.157, and 254.158
18 to read as follows:

19 Sec. 254.156. DISCLOSURE STATEMENT REQUIRED. (a) In
20 addition to the notice required under Section 254.155, a facility
21 shall provide to a patient or a patient's legally authorized
22 representative a written disclosure statement in accordance with
23 this section that:

24 (1) lists the facility's observation and facility fees
25 that may result from the patient's visit; and

26 (2) lists the health benefit plans in which the
27 facility is a network provider in the health benefit plan's

1 provider network or states that the facility is an out-of-network
2 provider for all health benefit plans.

3 (b) A facility shall provide the disclosure statement in
4 accordance with the standards prescribed by Section 254.153(a).

5 (c) The disclosure statement must be:

6 (1) printed in at least 16-point boldface type;

7 (2) in a contrasting color using a font that is easily
8 readable; and

9 (3) in English and Spanish.

10 (d) The disclosure statement:

11 (1) must include:

12 (A) the name and contact information of the
13 facility; and

14 (B) a place for the patient or the patient's
15 legally authorized representative and an employee of the facility
16 to sign and date the disclosure statement;

17 (2) may include information on the facility's
18 procedures for seeking reimbursement from the patient's health
19 benefit plan; and

20 (3) must, as applicable:

21 (A) state "This facility charges a facility fee
22 for medical treatment" and include:

23 (i) the facility's median facility fee;

24 (ii) a range of possible facility fees; and

25 (iii) the facility fees for each level of
26 care provided at the facility; and

27 (B) state "This facility charges an observation

1 fee for medical treatment" and include:

- 2 (i) the facility's median observation fee;
- 3 (ii) a range of possible observation fees;
- 4 and
- 5 (iii) the observation fees for each level
- 6 of care provided at the facility.

7 (e) A facility may include only the information described by
8 Subsection (d) in the required disclosure statement and may not
9 include any additional information in the statement. The facility
10 annually shall update the statement.

11 (f) A facility shall provide each patient with a physical
12 copy of the disclosure statement even if the patient refuses or is
13 unable to sign the statement. If a patient refuses or is unable to
14 sign the statement, as required by this section, the facility shall
15 indicate in the patient's file that the patient failed to sign.

16 (g) A facility shall retain a copy of a signed disclosure
17 statement provided under this section until the first anniversary
18 of the date on which the disclosure was signed.

19 (h) A facility is not required to provide notice to a
20 patient or a patient's legally authorized representative under this
21 section if the facility determines before providing emergency
22 health care services to the patient that the patient will not be
23 billed for the services.

24 (i) A facility complies with the requirements of
25 Subsections (a)(1) and (d)(3) if the facility posts on the
26 facility's Internet website in a manner that is easily accessible
27 and readable:

1 (1) the facility's standard charges, including the
2 fees described by those subsections; and

3 (2) updates to the standard charges at least annually
4 or more frequently as appropriate to reflect the facility's current
5 charges.

6 Sec. 254.157. CERTAIN ADVERTISING PROHIBITED. (a) A
7 facility may not advertise or hold itself out as a network provider,
8 including by stating that the facility "takes" or "accepts" any
9 insurer, health maintenance organization, health benefit plan, or
10 health benefit plan network, unless the facility is a network
11 provider of a health benefit plan issuer.

12 (b) A facility may not post the name or logo of a health
13 benefit plan issuer in any signage or marketing materials if the
14 facility is an out-of-network provider for all of the issuer's
15 health benefit plans.

16 (c) A violation of this section is a false, misleading, or
17 deceptive act or practice under Subchapter E, Chapter 17, Business
18 & Commerce Code, and is actionable under that subchapter.

19 Sec. 254.158. REMOVAL OF SIGNS. A facility that closes or
20 for which a license issued under this chapter expires or is
21 suspended or revoked shall immediately remove or cause to be
22 removed any signs within view of the general public indicating that
23 the facility is in operation.

24 SECTION 7. Sections 254.203(a) and (b), Health and Safety
25 Code, are amended to read as follows:

26 (a) The department may petition a district court for a
27 temporary restraining order to restrain a continuing violation of

1 the standards or licensing requirements provided under this chapter
2 or of Section 254.158 if the department finds that the violation
3 creates an immediate threat to the health and safety of the patients
4 of a facility or of the public.

5 (b) A district court, on petition of the department and on a
6 finding by the court that a person is violating the standards or
7 licensing requirements provided under this chapter or is violating
8 Section 254.158, may by injunction:

9 (1) prohibit a person from continuing the [~~a~~]
10 violation [~~of the standards or licensing requirements provided~~
11 ~~under this chapter~~];

12 (2) restrain or prevent the establishment or operation
13 of a facility without a license issued under this chapter; or

14 (3) grant any other injunctive relief warranted by the
15 facts.

16 SECTION 8. Sections 254.205(a) and (c), Health and Safety
17 Code, are amended to read as follows:

18 (a) The department may impose an administrative penalty on a
19 person licensed under this chapter who violates this chapter or a
20 rule or order adopted under this chapter. A penalty collected under
21 this section or Section 254.206 shall be deposited in the state
22 treasury to the credit of the freestanding emergency medical care
23 facility licensing [~~in the general revenue~~] fund described by
24 Section 254.104.

25 (c) The [~~amount of the~~] penalty may not exceed \$1,000 for
26 each violation. Each [~~, and each~~] day of a continuing violation may
27 be considered [~~continues or occurs is~~] a separate violation for

1 purposes of imposing a penalty. [~~The total amount of the penalty~~
2 ~~assessed for a violation continuing or occurring on separate days~~
3 ~~under this subsection may not exceed \$5,000.~~]

4 SECTION 9. Notwithstanding Section 108.002, Health and
5 Safety Code, as amended by this Act, the Department of State Health
6 Services is not required to collect data from a freestanding
7 emergency medical care facility under Chapter 108, Health and
8 Safety Code, unless money is available for that purpose.

9 SECTION 10. This Act takes effect September 1, 2019.