

House Bill 2041
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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 amended to read as follows:

Sec. 241.202. ADVERTISING. A facility described by Section 241.201;

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

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

SENATE VERSION (IE)

SECTION 1. Same as House version.

SECTION 2. Same as House version.

CONFERENCE

House Bill 2041
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 3. Subchapter I, Chapter 241, Health and Safety Code, is amended by adding Section 241.205 to read as follows:

Sec. 241.205. DISCLOSURE STATEMENT REQUIRED.
A facility described by Section 241.201 shall comply with Section 254.156.

SECTION 4. Section 254.104, Health and Safety Code, is amended to read as follows:

Sec. 254.104. **FREESTANDING EMERGENCY MEDICAL CARE FACILITY LICENSING FUND.** All fees and administrative penalties collected under this chapter shall 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.

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

- (a) A facility shall post notice that:
- (1) states:
- (A) the facility is a freestanding emergency medical care facility;
- (B) 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 may ~~not~~ be an out-of-network ~~[a participating]~~ provider for ~~in~~ the patient's health benefit plan provider network; and

SENATE VERSION (IE)

SECTION 3. Same as House version.

SECTION 4. Same as House version.

SECTION 5. Same as House version.

CONFERENCE

House Bill 2041
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

(2) either:

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

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

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

(1) at the primary entrance to the facility;

(2) in each patient treatment room;

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

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

(A) entitled "Insurance Information"; and

(B) located prominently on the home page.

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

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

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

SENATE VERSION (IE)

CONFERENCE

House Bill 2041
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

Sec. 254.156. DISCLOSURE STATEMENT REQUIRED.

(a) In addition to the notice required under Section 254.155, a facility shall provide to a patient or a patient's legally authorized representative a written disclosure statement in accordance with this section that:

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

(2) lists the health benefit plans in which the facility is a network provider in the health benefit plan's provider network or states that the facility is an out-of-network provider for all health benefit plans.

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

(c) The disclosure statement must be:

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

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

(3) in English and Spanish.

(d) The disclosure statement:

(1) must include:

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

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

SENATE VERSION (IE)

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

Sec. 254.156. DISCLOSURE STATEMENT REQUIRED.

(a) In addition to the notice required under Section 254.155, a facility shall provide to a patient or a patient's legally authorized representative a written disclosure statement in accordance with this section that:

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

(2) lists the health benefit plans in which the facility is a network provider in the health benefit plan's provider network or states that the facility is an out-of-network provider for all health benefit plans.

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

(c) The disclosure statement must be:

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

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

(3) in English and Spanish.

(d) The disclosure statement:

(1) must include:

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

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

CONFERENCE

House Bill 2041
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

(2) may include information on the facility's procedures for seeking reimbursement from the patient's health benefit plan; and
(3) must, as applicable:
(A) state "This facility charges a facility fee for medical treatment" and include:
(i) the facility's median facility fee;
(ii) a range of possible facility fees; and
(iii) the facility fees for each level of care provided at the facility; and
(B) state "This facility charges an observation fee for medical treatment" and include:
(i) the facility's median observation fee;
(ii) a range of possible observation fees; and
(iii) the observation fees for each level of care provided at the facility.
(e) A facility may include only the information described by Subsection (d) in the required disclosure statement and may not include any additional information in the statement. The facility annually shall update the statement.
(f) A facility shall provide each patient with a physical copy of the disclosure statement even if the patient refuses or is unable to sign the statement. If a patient refuses or is unable to sign the statement, as required by this section, the facility shall indicate in the patient's file that the patient failed to sign.
(g) A facility shall retain a copy of a signed disclosure statement provided under this section until the first anniversary of the date on which the disclosure was signed.
(h) A facility is not required to provide notice to a patient or a patient's legally authorized representative under this section if the facility determines before providing emergency

SENATE VERSION (IE)

(2) may include information on the facility's procedures for seeking reimbursement from the patient's health benefit plan; and
(3) must, as applicable:
(A) state "This facility charges a facility fee for medical treatment" and include:
(i) the facility's median facility fee;
(ii) a range of possible facility fees; and
(iii) the facility fees for each level of care provided at the facility; and
(B) state "This facility charges an observation fee for medical treatment" and include:
(i) the facility's median observation fee;
(ii) a range of possible observation fees; and
(iii) the observation fees for each level of care provided at the facility.
(e) A facility may include only the information described by Subsection (d) in the required disclosure statement and may not include any additional information in the statement. The facility annually shall update the statement.
(f) A facility shall provide each patient with a physical copy of the disclosure statement even if the patient refuses or is unable to sign the statement. If a patient refuses or is unable to sign the statement, as required by this section, the facility shall indicate in the patient's file that the patient failed to sign.
(g) A facility shall retain a copy of a signed disclosure statement provided under this section until the first anniversary of the date on which the disclosure was signed.
(h) A facility is not required to provide notice to a patient or a patient's legally authorized representative under this section if the facility determines before providing emergency

CONFERENCE

House Bill 2041
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

health care services to the patient that the patient will not be billed for the services.

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

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

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

Sec. 254.157. CERTAIN ADVERTISING PROHIBITED.

(a) A facility may not advertise or hold itself out as a network provider, including by stating that the facility "takes" or "accepts" any insurer, health maintenance organization, health benefit plan, or health benefit plan network, unless the facility is a network provider of a health benefit plan issuer.

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

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

Sec. 254.158. REMOVAL OF SIGNS. A facility that closes or for which a license issued under this chapter expires or is

SENATE VERSION (IE)

health care services to the patient that the patient will not be billed for the services.

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

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

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

(j) A facility's failure to obtain the signed disclosure statement required by this section from the patient or the patient's legally authorized representative may not be a determining factor in the adjudication of liability for health care services provided to the patient at the facility. [FA1(1)]

Sec. 254.157. CERTAIN ADVERTISING PROHIBITED.

(a) A facility may not advertise or hold itself out as a network provider, including by stating that the facility "takes" or "accepts" any insurer, health maintenance organization, health benefit plan, or health benefit plan network, unless the facility is a network provider of a health benefit plan issuer.

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

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

Sec. 254.158. REMOVAL OF SIGNS. A facility that closes or for which a license issued under this chapter expires or is

CONFERENCE

House Bill 2041
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

suspended or revoked shall immediately remove or cause to be removed any signs within view of the general public indicating that the facility is in operation.

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

(a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements provided under this chapter or of Section 254.158 if the department finds that the violation creates an immediate threat to the health and safety of the patients of a facility or of the public.

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

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

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

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

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

(a) The department may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter. A penalty collected under this section or Section 254.206 shall be deposited in the state treasury to the credit of the

SENATE VERSION (IE)

suspended or revoked shall immediately remove or cause to be removed any signs within view of the general public indicating that the facility is in operation.

SECTION 7. Same as House version.

SECTION 8. Same as House version.

CONFERENCE

House Bill 2041
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

~~freestanding emergency medical care facility licensing [in the general revenue] fund described by Section 254.104.~~

(c) The ~~[amount of the]~~ penalty may not exceed \$1,000 for each violation. ~~Each[, and each] day of a continuing violation may be considered [continues or occurs is] a separate violation for purposes of imposing a penalty. [The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed \$5,000.]~~

No equivalent provision.

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

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

SENATE VERSION (IE)

SECTION __. The Health and Human Services Commission and the Department of State Health Services are required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the commission and department may, but are not required to, implement a provision of this Act using other appropriations available for that purpose. [FA1(2)]

SECTION 9. Same as House version.

SECTION 10. Same as House version.

CONFERENCE