

BILL ANALYSIS

Senate Research Center

S.B. 1876
By: Miles; Huffman
Health & Human Services
6/7/2021
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

During emergencies, many end stage renal disease (ESRD) facilities, commonly known as dialysis centers, close their doors, leaving their patients with missed appointments and lack of access to needed dialysis care. While this is usually an issue caused by hurricanes and tropical storms, most recently this occurred during the unprecedented winter storm that struck Texas. When patients are unable to access their routine dialysis treatment, their conditions worsen, and they are generally forced to seek hospital care.

S.B. 1876 would require ESRD facilities to adopt a written emergency preparedness and contingency operations plan. It would also amend the Utilities Code to prioritize power to ESRD facilities so that they are on par with hospitals, nursing homes, assisted living facilities, and hospices.

(Original Author's / Sponsor's Statement of Intent)

S.B. 1876 amends current law relating to emergency planning for the continued treatment and safety of end stage renal disease facility patients.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 (Section 773.112, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the Public Utility Commission of Texas is modified in SECTION 3 (Section 38.072, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 251, Health and Safety Code, by adding Sections 251.016 and 251.017, as follows:

Sec. 251.016. EMERGENCY PREPAREDNESS AND CONTINGENCY OPERATIONS PLANNING. (a) Defines "emergency" for this section and Section 251.017.

(b) Requires each end stage renal disease facility to adopt a written emergency preparedness and contingency operations plan to address the provision of care during an emergency. Requires that the plan:

(1) be updated annually and approved by the facility's leadership each time the plan is updated;

(2) include procedures for notifying each of certain entities as soon as practicable regarding the closure or reduction in hours of operation of the facility due to an emergency;

(3) except as provided by Subsection (d), require the facility to execute a contract with another end stage renal disease facility located within a 100-mile radius of the facility stipulating that the other end stage renal disease facility will provide dialysis treatment to facility patients who are unable to receive scheduled dialysis treatment due to the facility's closure or reduction in hours; and

(4) include a documented patient communications plan that includes procedures for notifying a patient when that patient's scheduled dialysis treatment is interrupted.

(c) Requires each end stage renal disease facility to develop and requires the facility's leadership to approve a continuity of care plan for the provision of dialysis treatment to facility patients during an emergency as part of the emergency preparedness and contingency operations plan adopted under Subsection (b). Requires the facility to provide a copy of the plan to each patient before providing or scheduling dialysis treatment. Requires that the plan include:

(1) procedures for distributing written materials to facility patients that specifically describe the facility's emergency preparedness and contingency operations plan adopted under Subsection (b); and

(2) detailed procedures, based on the facility's patient population, on the facility's contingency plans, including transportation options, for patients to access dialysis treatment at each end stage renal disease facility with which the facility has an agreement or made advance preparations to ensure that the facility's patients have the option to receive dialysis treatment.

(d) Provides that an end stage renal disease facility is not required to contract with another end stage renal disease facility under Subsection (b)(3) if no other end stage renal disease facility is located within a 100-mile radius of the facility and if the facility obtains written approval from the Department of State Health Services (DSHS) exempting the facility from that requirement.

(e) Requires an end stage renal disease facility, on request, to provide the facility's emergency preparedness and contingency operations plan adopted under Subsection (b) to DSHS, to each hospital with which the facility has a transfer agreement, to the trauma service area regional advisory council that serves the geographic area in which the facility is located, and to each applicable local emergency management agency.

(f) Requires each end stage renal disease facility to provide annual training to facility staff on the facility's emergency preparedness and contingency operations plan under this section.

(g) Requires each end stage renal disease facility to annually contact a local and state disaster management representative, an emergency operations center, and a trauma service area regional advisory council to:

(1) request comments on whether the emergency preparedness and contingency operations plan adopted by the facility under Subsection (b) should be modified; and

(2) ensure that local agencies, regional agencies, state agencies, and hospitals are aware of the facility, the facility's policy on provision of life-saving treatment, the facility's patient population and potential transportation needs, and the anticipated number of patients affected.

Sec. 251.017. EMERGENCY CONTINGENCY PLAN FOR POWER AND POTABLE WATER. (a) Requires each end stage renal disease facility to adopt an emergency contingency plan for the continuity of essential building systems during an emergency. Requires that a plan adopted by a facility under this subsection meet the requirements described by Subsection (b), (d), or (e).

(b) Requires an end stage renal disease facility, unless the facility adopts a plan described by Subsection (d) or (e), to adopt an emergency contingency plan as required by Subsection (a) under which the facility is required:

(1) to have an on-site emergency generator that:

(A) has a type 2 essential electrical distribution system in accordance with the National Fire Protection Association 99, Section 4.5, and the National Fire Protection Association 110;

(B) is installed, tested, and maintained in accordance with the National Fire Protection Association 99, Section 4.5.4, and the National Fire Protection Association 110; and

(C) is kept at all times not less than 10 feet from the electrical transformer;

(2) except as provided by Subsection (c), to maintain an on-site fuel source that contains enough fuel capacity to power the on-site generator for not less than 24 hours, as determined by the electrical load demand on the emergency generator for that period;

(3) to maintain a sufficient quantity of potable water on-site to operate the facility's water treatment system for not less than 24 hours; and

(4) to maintain a water valve connection that allows an outside vendor to provide potable water to operate the facility's water treatment system.

(c) Provides that an end stage renal disease facility that adopts an emergency contingency plan under Subsection (b) is not required to maintain an on-site fuel source described by Subsection (b)(2) if the facility's on-site emergency generator uses a vapor liquefied petroleum gas system with a dedicated fuel supply.

(d) Requires an end stage renal disease facility, unless the facility adopts a plan described by Subsection (b) or (e), to adopt an emergency contingency plan as required by Subsection (a) under which the facility is required:

(1) to maintain sufficient resources to provide on demand or to execute a contract with an outside supplier or vendor to provide on demand:

(A) a portable emergency generator that has an electrical transfer switch with a plug-in device to provide emergency power for patient care areas and complies with National Fire Protection Association 99, Section 4.5.2.2.2, and that has a water valve connection that allows for the use of potable water to operate the facility's water treatment system;

(B) an alternate power source for light, including battery-powered light, that is separate and independent from the normal electrical power source, is capable of providing light for not less than one and a half hours, is capable of providing a sufficient amount of light to allow for the safe evacuation of the building, and is maintained and tested not less than four times each year; and

(C) potable water;

(2) to implement the plan when the facility loses electrical power due to a natural or man-made event during which the electrical power may not be restored within 24 hours; and

(3) to contact the outside supplier or vendor with which the facility contracts under Subdivision (1), if applicable, not later than 36 hours after the facility loses electrical power.

(e) Requires an end stage renal disease facility, unless the facility adopts a plan described by Subsection (b) or (d), to adopt an emergency contingency plan as required by Subsection (a) under which the facility is required to execute a contract with another end stage renal disease facility that is located within a 100-mile radius of the facility stipulating that the other end stage renal disease facility will provide emergency contingency care to the facility's patients. Requires the other end stage renal disease facility with which the facility contracts to have an alternate power source for light, including battery-powered light, that:

(1) is separate and independent from the normal electrical power source;

(2) is capable of providing light for not less than one and a half hours;

(3) is capable of providing a sufficient amount of light to allow for the safe evacuation of the building; and

(4) is maintained and tested not less than four times each year.

SECTION 2. Amends Section 773.112, Health and Safety Code, by adding Subsection (d), as follows:

(d) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) by rule, consistent with rules adopted under Section 773.112 (Rules), to require that each applicable emergency medical services medical director approve protocols that give preference to the emergency transfer of a dialysis patient from the patient's location directly to an outpatient end stage renal disease facility during a declared disaster. Defines "disaster" and "end stage renal disease facility."

SECTION 3. Amends Sections 38.072(a) and (b), Utilities Code, as follows:

(a) Defines "end stage renal disease facility" for Section 38.072 (Priorities for Power Restoration to Certain Medical Facilities). Makes nonsubstantive changes.

(b) Requires the Public Utility Commission of Texas (PUC) by rule to require an electric utility to give to certain healthcare facilities, including an end stage renal disease facility, the same priority that it gives to a hospital in the utility's emergency operations plan for restoring power after an extended power outage. Makes nonsubstantive changes.

SECTION 4. Amends Section 13.1395, Water Code, by adding Subsection (c-1), as follows:

(c-1) Authorizes an emergency preparedness plan submitted under Subsection (b) (relating to requiring a utility to adopt an emergency preparedness plan to ensure the emergency operation of its water system during a natural disaster) to provide for the prioritization of water restoration to an end stage renal disease facility, as that term is defined by Section 251.001 (Definitions), Health and Safety Code, in the same manner as an affected utility restores service to a hospital following an extended power outage. Requires the affected utility to restore the service in accordance with the facility's needs, the affected community's needs, and the characteristics of the geographic area in which water is to be restored.

SECTION 5. Provides that, as soon as practicable after the effective date of this Act:

- (1) each end stage renal disease facility is required to develop and implement the plans required under Sections 251.016 and 251.017, Health and Safety Code, as added by this Act;
- (2) the executive commissioner is required to adopt the rules required by Section 773.112(d), Health and Safety Code, as added by this Act; and
- (3) the PUC is required to adopt the rules required by Section 38.072, Utilities Code, as amended by this Act.

SECTION 6. Effective date: September 1, 2021.