

By: Menéndez, et al.
(Dean, Oliverson, Guillen)

S.B. No. 2038

Substitute the following for S.B. No. 2038:

By: Klick

C.S.S.B. No. 2038

A BILL TO BE ENTITLED

AN ACT

relating to prices and fees charged by certain freestanding emergency medical care facilities during a declared state of disaster; providing administrative penalties.

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

SECTION 1. Chapter 241, Health and Safety Code, is amended by adding Subchapter I-1 to read as follows:

SUBCHAPTER I-1. PRICES AND FEES CHARGED DURING DISASTER BY
FREESTANDING EMERGENCY MEDICAL CARE FACILITIES ASSOCIATED WITH
CERTAIN HOSPITALS

Sec. 241.221. APPLICABILITY. (a) This subchapter applies only to a freestanding emergency medical care facility, as that term is defined by Section 254.001, that is:

(1) exempt from the licensing requirements of Chapter 254 under Section 254.052(5), (7), or (8); and

(2) associated with a hospital licensed under this chapter that does not meet the conditions of participation for certification under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.).

(b) This subchapter does not apply to a freestanding emergency medical care facility associated with a hospital licensed under this chapter that:

(1) has been operating as a hospital for less than one year;

1 (2) has submitted an application to a federally
2 recognized accreditation program for certification under Title
3 XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.);
4 and

5 (3) has not failed an accreditation for certification.
6 Sec. 241.222. DISCLOSURE OF CERTAIN PRICES AND FEES DURING
7 DECLARED DISASTER; CONSTRUCTION. (a) A facility described by
8 Section 241.221 that provides testing or vaccination for an
9 infectious disease based on a state of disaster declared under
10 Chapter 418, Government Code, shall disclose to each patient the
11 prices the facility charges for the test or vaccine and any facility
12 fees, supply costs, and other costs associated with the test or
13 vaccine in accordance with the disclosure requirements described by
14 Section 254.156, as added by Chapter 1093 (H.B. 2041), Acts of the
15 86th Legislature, Regular Session, 2019.

16 (b) This section may not be construed as expanding the type
17 of health care services a facility described by Section 241.221 is
18 authorized to provide.

19 Sec. 241.223. PROHIBITED PRICING PRACTICES DURING DECLARED
20 STATE OF DISASTER. (a) In this section, "unconscionable price"
21 means a price that is more than 200 percent of the average price for
22 the same or a substantially similar product or service provided to
23 other individuals by health care facilities located in the same
24 county or nearest county to the county in which the facility
25 described by Section 241.221 is located, as applicable, according
26 to data collected by the department under Chapter 108.

27 (b) During a state of disaster declared by the governor

1 under Chapter 418, Government Code, a facility described by Section
2 241.221 may not:

3 (1) charge an individual an unconscionable price for a
4 product or service provided at the facility; or

5 (2) knowingly or intentionally charge a third-party
6 payor, including a health benefit plan insurer, a price higher than
7 the price charged to an individual for the same product or service
8 based on the payor's liability for payment or partial payment of the
9 product or service.

10 (c) Subsection (b)(2) does not prohibit a facility
11 described by Section 241.221 from:

12 (1) offering an uninsured individual a cash discount
13 for a particular product or service; or

14 (2) accepting directly from an individual full payment
15 for a health care product or service in lieu of submitting a claim
16 to the individual's health benefit plan.

17 Sec. 241.224. ENFORCEMENT. Notwithstanding any
18 conflicting provision in this subchapter and except for good cause
19 shown, the commission shall impose the following penalty on a
20 person licensed under this chapter who violates Section 241.223 or
21 a rule adopted under that section:

22 (1) for the first violation, an administrative penalty
23 in an amount equal to \$10,000;

24 (2) for the second violation:

25 (A) an administrative penalty in an amount equal
26 to \$50,000; and

27 (B) a suspension of the person's license for 30

1 days; and

2 (3) for the third violation, a permanent revocation of
3 the person's license.

4 SECTION 2. Subchapter D, Chapter 254, Health and Safety
5 Code, is amended by adding Section 254.1555 to read as follows:

6 Sec. 254.1555. DISCLOSURE OF CERTAIN PRICES AND FEES DURING
7 DECLARED DISASTER; CONSTRUCTION. (a) A facility that provides
8 testing or vaccination for an infectious disease based on a state of
9 disaster declared under Chapter 418, Government Code, shall
10 disclose the price the facility charges for the test or vaccine and
11 any facility fees, supply costs, and other costs associated with
12 the test or vaccine in accordance with the disclosure requirements
13 described by Section 254.156, as added by Chapter 1093 (H.B. 2041),
14 Acts of the 86th Legislature, Regular Session, 2019.

15 (b) This section may not be construed as expanding the type
16 of health care services a facility is authorized to provide under
17 this chapter.

18 SECTION 3. Subchapter D, Chapter 254, Health and Safety
19 Code, is amended by adding Section 254.160 to read as follows:

20 Sec. 254.160. PROHIBITED PRICING PRACTICES DURING DECLARED
21 STATE OF DISASTER. (a) In this section, "unconscionable price"
22 means a price that is more than 200 percent of the average price for
23 the same or a substantially similar product or service provided to
24 other individuals by health care facilities located in the same
25 county or nearest county to the county in which the freestanding
26 emergency medical care facility is located, as applicable,
27 according to data collected by the department under Chapter 108.

1 (b) During a state of disaster declared by the governor
2 under Chapter 418, Government Code, a facility may not:

3 (1) charge an individual an unconscionable price for a
4 product or service provided at the facility; or

5 (2) knowingly or intentionally charge a third-party
6 payor, including a health benefit plan insurer, a price higher than
7 the price charged to an individual for the same product or service
8 based on the payor's liability for payment or partial payment of the
9 product or service.

10 (c) Subsection (b)(2) does not prohibit a facility from:

11 (1) offering an uninsured individual a cash discount
12 for a particular product or service; or

13 (2) accepting directly from an individual full payment
14 for a health care product or service in lieu of submitting a claim
15 to the individual's health benefit plan.

16 SECTION 4. Subchapter E, Chapter 254, Health and Safety
17 Code, is amended by adding Section 254.207 to read as follows:

18 Sec. 254.207. ENFORCEMENT. Notwithstanding any
19 conflicting provision in this subchapter and except for good cause
20 shown, the Health and Human Services Commission shall impose the
21 following on a person licensed under this chapter who violates
22 Section 254.160 or a rule adopted under that section:

23 (1) for the first violation, an administrative penalty
24 in an amount equal to \$10,000;

25 (2) for the second violation:

26 (A) an administrative penalty in an amount equal
27 to \$50,000; and

1 (B) a suspension of the person's license for 30
2 days; and

3 (3) for the third violation, a permanent revocation of
4 the person's license.

5 SECTION 5. This Act takes effect September 1, 2021.