

SUBJECT: Defining emergency medical care, emergency care, emergency services

COMMITTEE: Insurance — favorable, without amendment

VOTE: 6 ayes — Smithee, Duncan, Averitt, Driver, G. Lewis, Shields

3 absent — Counts, De La Garza, Dutton

SENATE VOTE: On final passage, May 3 — 31-0

WITNESSES: No public hearing

BACKGROUND: "*Emergency care*" is defined in VACS, art. 3.70-2 and VACS, art. 20A.02 and "*emergency medical care*" is defined in Health and Safety Code, sec. 773.003 as bona fide emergency services provided after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:

- placing the patient's health in serious jeopardy;
- serious impairment to bodily functions or;
- serious dysfunction of any bodily organ or part.

"*Emergency services*" are defined in the Health and Safety Code, sec. 311.021 as services usually available at a hospital and that must be provided immediately to:

- sustain a persons life;
- prevent serious disfigurement or loss or impairment of the function of a body part or organ or;
- provide for the care of a woman in active labor or, if the hospital is not equipped for that service, to provide necessary treatment to allow the woman to travel to a more appropriate facility without undue risk of serious harm.

DIGEST: SB 1361 would amend definitions for "*emergency care*" "*emergency medical care*" and "*emergency services*" in various sections of the statutes.

SB 1361 would provide an amended definition for "*emergency care*" to be used in individual or group policies of accident or sickness insurance issued by companies subject to Chapter 20 of the Insurance Code, concerning group hospital service as well as plans provided by health maintenance organizations, which provide for a health care plan to enrollees on a prepaid basis.

The amended definition of "*emergency medical care*" would apply to the statutes concerning the provision of emergency medical services, while the amended definition of "*emergency services*" would be found in the statutes governing the powers and duties of hospitals.

The bill would amend the definition of "*emergency care*" in VACS, art. 3.70-2 and VACS, art. 20A.02 to provide that emergency care would mean emergency service provided after the recent onset of a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected by a prudent layperson to result in:

- placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy or;
- services provided to a pregnant woman who is having contractions and there is inadequate time to effect a safe transfer to another hospital before delivery or transfer may pose a threat to the health or safety of the woman or her unborn child.

The definition of "*emergency medical care*" in Health and Safety Code, sec. 773.003 would be amended in the same way as the definition of "*emergency care*" in VACS, art. 3.70-2 and VACS, art. 20A.02 except that it would not include the language, "by a prudent layperson."

SB 1361 would amend the definition of "*emergency services*" in Health and Safety Code, sec. 311.021 to mean services that are usually and customarily available at a hospital and that must be provided:

- after the recent onset of a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the

absence of immediate medical attention could reasonably be expected to result in placing the health of the individual (or a woman's unborn child) in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part.

- to a pregnant woman who is having contractions and there is not enough time to transfer her safety to another hospital before delivery or transfer may pose a threat to the health and safety of the woman and her unborn child.

SUPPORTERS
SAY:

The Department of Insurance and emergency physicians report numerous complaints from consumers whose carriers have refused to reimburse them for services the patient believed to be a medical emergency. Few people go to the emergency room for a lark — often there is no way for the average insured person or plan participant to know whether they have an emergency medical condition until they receive a full exam by a physician.

Insurance companies usually deny claims on the grounds that the patient had enough time to go the emergency hospital with which the plan had a contract or that the emergency room physician found that no emergency medical condition existed.

SB 1361 would not encourage patients to overuse emergency services. While there is a limited potential for this kind of "abuse" of the system, current law has already lead to substantial and real abuses by carriers and managed care plans through denial of coverage for conditions that any reasonable person would expect to be a medical emergency.

The risks of the patient guessing wrong are simply too high since they can result in death and serious injury. Coverage for what a *reasonable person* believes is a emergency medical condition is what that person believed and expected he was purchasing when he acquired medical coverage.

OPPONENTS
SAY:

Specifying that "emergency care" would mean the recent onset of a medical condition that could reasonably be expected *by a prudent layperson* to result in serious jeopardy, impairment or dysfunction of a person would lead to overutilization of emergency room services. Simply being a prudent

layperson does not make someone qualified to make an informed decision about a medical condition.

SB 1361 would allow certain persons to abuse the system and constantly refer themselves to the emergency room for ordinary medical care which they could receive in a doctor's office. Patient self referral would eventually result in increased health care costs for everyone.

OTHER
OPPONENTS
SAY:

Federal law requires that any person seeking emergency care receive an emergency medical screening exam to determine whether or not they have an emergency condition, but does not specify who should pay for this exam. The bill should be amended to specify that health plans would cover this screening exam, similar to language already adopted by the House in HB 2766 by Smithee.

NOTES:

HB 2766 by Smithee, which would add a Patient Protection Act to the Insurance Code and require health plans to cover emergency medical screening exams and deem certain emergency services covered until denied in a time period appropriate to the delivery of care, passed the House by nonrecord vote on May 10 and is scheduled for public hearing in the Senate Economic Development Committee on May 19.