SUBJECT: Regulation of freestanding emergency medical care facilities

COMMITTEE: Public Health — committee substitute recommended

VOTE: 8 ayes — Kolkhorst, Coleman, J. Davis, Gonzales, Hopson, S. King, Laubenberg, Zerwas

0 nays

3 absent — Naishtat, McReynolds, Truitt

WITNESSES: For — Michael Kutsen ,John McGee, ER Centers of America, Inc.; Kirk Mahon, Legacy ER; Jacob Novak, First Choice Emergency Rooms; Robert Rankins; (*Registered, but did not testify:* Allen Johnson, Montgomery County Hospital District; Carolyn Kennedy)

Against — None

BACKGROUND: In recent years, free-standing medical facilities have begun delivering emergency medical services in Texas. The Department of State Health Services (DSHS) licenses Texas health care facilities. Texas has no regulations specific to free-standing emergency medical care facilities.

DIGEST: CSHB 1357 would require a license to establish or operate a freestanding emergency medical care facility that was not affiliated with a licensed hospital and that provided people with emergency care. These facilities would be required to provide care to a patient to determine whether an emergency condition existed, regardless of the patient's ability to pay.

Rule-making authority. By March 1, 2010, the executive commissioner of the Health and Human Services Commission would adopt rules governing operation and regulation of freestanding emergency medical care facilities. Fees would be imposed in amounts necessary to defray the cost of regulating these facilities. The rules would contain minimum standards for:

- facility design, construction, equipment, and hygiene;
- facility administration, professional staffing, and personnel;

- contents, maintenance, and release of medical records;
- minimum care standards and standards for denial of care;
- provision of laboratory and radiological services; and
- distribution and administration of controlled substances.

Facility classification. The executive commissioner would establish a classification for a facility that operated 24 hours per day as well as for facilities that were not in continuous use.

Facilities that were not in continuous use would have to be open seven days per week for at least 12 hours per day. The bill would establish a date by which facilities that did not operate 24 hours per day no longer could use the term "emergency" in advertising or marketing. Facilities that did not operate continuously would have to display a sign that indicated if the facility was open, provided information regarding operating hours, and directed patients to a licensed, continuously operated emergency facility within 10 miles.

Application for license. Applications for a license to operate a freestanding emergency medical care facility would be submitted to DSHS, and would include evidence that there was at least one licensed physician and one nurse on staff. A license fee would be required to apply for a license and for annual renewal. DSHS would issue a license if the department found that the facility met licensing requirements based on the information obtained during an inspection and investigation.

Enforcement actions. DSHS could inspect facilities as necessary to ensure ongoing compliance. DSHS could deny, suspend, or revoke facility licenses for violations of applicable laws or rules. These enforcement actions could be appealed in a contested case hearing. The bill would establish the process by which a facility could be placed on probation for noncompliance.

Emergency license suspensions could be issued without hearing or notice to the license holder if there was reasonable cause to believe the facility posed immediate danger to the public health and safety. The bill would establish provisions for a hearing on and appeal of the emergency suspension.

DSHS could petition a district court to issue an injunction to restrain continuing violations of facility operational standards or licensing

requirements that immediately threatened patient safety. DSHS could request the attorney general to conduct a suit regarding the violation.

Penalties. DSHS could impose administrative penalties of up to $5,000 for an ongoing violation, accrued in an amount up to $1,000 per day. The bill would establish the procedures by which DSHS would notify the facility of the penalty and the process by which the accused could request a hearing, which would be conducted by an administrative law judge of the State Office of Administrative Hearings. Based on the findings and recommendations of the administrative law judge, DSHS could impose a penalty or find that a violation did not occur.

The bill would establish the process by which a person could either pay an administrative penalty or request judicial review of the imposition of the penalty. Under judicial review, the court could uphold the penalty, reduce the penalty, or order that the penalty is not owed. All fees collected from freestanding emergency medical care facilities, including penalties and licensing fees, would be deposited into the freestanding emergency medical care facility licensing fund created in the state treasury and could be used by DSHS for administration and enforcement activities.

On or after September 1, 2010, each day that a facility operated as a freestanding emergency medical care facility without a license would be a class C misdemeanor (maximum fine of $500).

Health benefit plan coverage. The bill would amend the Insurance code definition of emergency care to include services provided in a freestanding emergency medical care facility. Health plans issued or renewed on or after March 1, 2010 and offered by health maintenance organizations and preferred provider organizations would be required to cover emergency services provided in freestanding emergency medical care facilities.

The bill would take effect September 1, 2009.

NOTES:

The fiscal note indicates the bill would have no impact on general revenue funds during fiscal 2010-11. The bill would require DSHS to generate revenues sufficient to cover the costs of regulation, so the analysis assumes that fees would be adjusted as necessary to cover any additional regulatory costs.