

SUBJECT: Requiring freestanding ERs to disclose certain prices during disaster

COMMITTEE: Public Health — committee substitute recommended

VOTE: 10 ayes — Klick, Guerra, Allison, Campos, Collier, Jetton, Oliverson, Price, Smith, Zwiener

0 nays

1 absent — Coleman

SENATE VOTE: On final passage, April 19 — 31-0, on Local and Uncontested Calendar

WITNESSES: No public hearing.

BACKGROUND: Health and Safety Code sec. 254.001(5) defines "freestanding emergency medical care facility," or a "freestanding ER," as a facility, structurally separate and distinct from a hospital, that receives an individual and provides emergency care.

Sec. 254.052(5), (7), and (8) exempt specified facilities from licensure requirements for establishing or operating a freestanding ER, including:

- a licensed hospital;
- a facility located within or connected to a licensed hospital or a hospital that is owned and operated by the state; or
- a facility that is owned or operated by a licensed hospital or by the state and is surveyed and granted provider-based status by the Centers for Medicare and Medicaid Services.

Under sec. 254.156, freestanding ERs must provide to a patient or a patient's legally authorized representative a written disclosure statement that lists the facility's observation and facility fees that may result from the patient's visit and that includes other related information as specified in statute. Such disclosure statements also must either list the health benefit plans in which the facility is an in-network provider or state that

the facility is an out-of-network provider for all health benefit plans.

Concerns have been raised that during the COVID-19 pandemic some patients received exorbitant medical bills after obtaining a COVID-19 test. Although previous legislation has attempted to address price transparency for certain health care facilities, including freestanding ERs, some suggest that additional enforcement is needed to prevent price gouging during a declared state of disaster.

DIGEST:

CSSB 2038 would require freestanding emergency medical care facilities (freestanding ERs) to disclose the prices charged for testing or vaccination for an infectious disease based on a declared state of disaster and any related facility fees or supply costs. The bill also would prohibit a freestanding ER from charging unconscionable prices during a declared state of disaster and would establish certain administrative penalties.

Applicability. The bill would apply to freestanding ERs that were exempt from certain licensure requirements under Health and Safety Code sec. 254.052(5), (7), or (8) and associated with a licensed hospital that did not meet conditions of participation for certification under federal law.

The bill also would apply to other freestanding ERs regulated under Health and Safety Code ch. 254.

Exceptions. The bill would not apply to a freestanding ER associated with a licensed hospital that:

- had been operating as a hospital for less than one year;
- had submitted an application to a federally recognized accreditation program for certification under federal law; and
- had not failed an accreditation for certification.

Disclosure of prices. A freestanding ER that provided testing or vaccination for an infectious disease based on a declared state of disaster would be required to disclose to each patient the prices they would charge for testing or vaccination and any facility fees, supply costs, and other

costs associated with the test or vaccine. The bill would require the disclosure to meet requirements specified under Health and Safety Code sec. 254.156.

These provisions could not be construed as expanding the type of health care services a freestanding ER could provide.

Prohibited pricing. During a state of disaster declared by the governor, a freestanding ER could not charge an individual an unconscionable price for a product or service provided at the facility. "Unconscionable price" would be defined as a price that was more than 200 percent of the average price for the same or a substantially similar product or service provided to other individuals by health care facilities located in the same or nearest county to the county in which the freestanding ER was located.

During a declared state of disaster, a freestanding ER also could not knowingly or intentionally charge a third-party payor, including a health benefit plan insurer, a price higher than the price charged to an individual for the same product or service based on the payor's liability for payment or partial payment of the product or service.

The bill would not prohibit a freestanding ER from offering an uninsured individual a cash discount for a product or service or from accepting directly from an individual full payment for a health care product or service in lieu of submitting a claim to the individual's health benefit plan.

Enforcement. The bill would require the Health and Human Services Commission, notwithstanding any conflicting provision and except for good cause shown, to impose the following penalties on a licensed person who violated the prohibition on unconscionable prices or an adopted rule:

- for the first violation, an administrative penalty equal to \$10,000;
- for the second violation, an administrative penalty equal to \$50,000 and a suspension of the person's license for 30 days; and
- for the third violation, a permanent revocation of the person's license.

The bill would take effect September 1, 2021.

NOTES:

The House companion bill, HB 2797 by Dean, was considered by the House Public Health Committee in a public hearing on April 21 and left pending.