

## **BILL ANALYSIS**

Senate Research Center

S.B. 2389  
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Health & Human Services  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

In 2007, the 80th Legislature considered whether or not to require hospitals to have a physician who is board certified in emergency medicine on duty at all times. S.B. 290, 80th Legislature, Regular Session, 2007, the only legislation including such a provision, never received a hearing. Shortly after the legislature adjourned, rules were adopted by the Department of State Health Services (DSHS) to mandate this requirement.

The standards required by 25 TAC 133.41(e)(2)(c) duplicate basic emergency services available in some areas, especially where smaller specialty hospitals may be in close proximity to Level 1 and Level 2 trauma hospitals. Small community hospitals affected by the rule frequently do not have the financial resources or economies of scale to compete with larger hospitals that offer more extensive emergency services.

Furthermore, the rule increases the cost of emergency care statewide. As with any scarce resource, increasing the demand for services without a corresponding increase in supply will result in a shortage of emergency department physicians throughout Texas.

Neither the Joint Commission on Accreditation of Health Organizations (JCAHO), nor the Medicare Conditions of Participation (COPs) impose a requirement to have an emergency medicine board-certified physician on staff 24 hours a day, seven days a week. And while a waiver to the rule exists in the letter of the law, in practice, no waiver can be obtained from DSHS as long as surrounding hospitals are required to consent to the waiver application.

As proposed, S.B. 2389 prohibits DSHS from requiring a hospital to have more restrictive staffing requirements to emergency medical care than are required by federal law.

[**Note:** While the statutory reference in this bill is to the Texas Department of Health (TDH), the following amendments affect the Department of State Health Services, as the successor agency to TDH.]

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter B, Chapter 241, Health and Safety Code, by adding Section 241.0261, as follows:

Sec. 241.0261. PHYSICIAN STAFFING REQUIREMENTS. (a) Prohibits the Texas Department of Health, notwithstanding any other law, from requiring a hospital to have more restrictive staffing requirements to emergency medical care than are required by federal law.

SECTION 2. Effective date: upon passage or September 1, 2009.