

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 2038  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

At the beginning of the pandemic, COVID-19 tests were heavily sought after by Texans. During this time, many Texans went to freestanding ERs to take these tests, as these facilities advertised that they would get results within 48 hours. What they did not expect was the high cost of the test, when they received their bill. There have been numerous articles documenting freestanding ERs charging insurance companies thousands of dollars for administering a COVID-19 test. One freestanding ER billed a Houston woman \$2,500 for her son's drive through test. The test itself was only \$175, but the facility tacked on \$2,300 in unnecessarily high facility, physician, and observation fees.

While freestanding ERs are emergency facilities and treat patients for these situations, they are not required to treat patients who are clearly not experiencing an emergency. These facilities have the ability to charge whatever they choose for facility and physician fees, which means they are actively choosing to bill COVID-19 patients exorbitant amounts during a pandemic. While these costs are not coming directly out of the consumer's pocket immediately, they eventually will. When insurance companies are paying these high prices, which they are required to during the pandemic, all of these costs will get wrapped back into premiums raising them for everyone. This also contributes to the rising cost of healthcare overall, which is troublesome during a pandemic. At a time when people are worried about surprise medical bills, many Texans may think they need to cover these costs and do something drastic like take out a loan. To charge these kinds of costs during a pandemic, especially for a service that will help make people aware if they have COVID-19, is extremely unnecessary and hurting the people of Texas.

This bill would address price gouging by freestanding ERs by prohibiting a freestanding ER from charging a facility, observation, or provider fee for testing or vaccinating from their vehicle. The bill would also prohibit freestanding ERs from charging a price that is unconscionable during a declared state of disaster. If a freestanding ER does price gouge, the bill would have the Health and Human Services Commission impose violations of administrative penalties and an eventual revocation of license.

As proposed, S.B. 2038 amends current law relating to fees and prices charged by freestanding emergency medical care facilities and provides administrative penalties.

### **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 D, Chapter 254, Health and Safety Code, by adding Section 254.1555, as follows:

Sec. 254.1555. CERTAIN FEES PROHIBITED. Authorizes a facility that provides a health care service, including testing and vaccination, to an individual accessing the service from the individual's vehicle to only charge the individual or a third-party payor a fee for administering the provided service and any related laboratory fees. Prohibits the

facility from charging the individual or payor any additional fees, including a facility fee, observation fee, or provider fee.

SECTION 2. Amends Subchapter D, Chapter 254, Health and Safety Code, by adding Section 254.160, as follows:

Sec. 254.160. PROHIBITED PRICING PRACTICES DURING DECLARED STATE OF DISASTER. (a) Defines "unconscionable price" to mean a price that is 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 county or nearest county to the county in which the freestanding emergency medical care facility is located, as applicable, according to data collected by the Department of State Health Services under Chapter 108 (Health Care Data Collection).

(b) Prohibits a facility, during a state of disaster declared under Chapter 418 (Emergency Management), Government Code, from charging an individual an unconscionable price for a product or service provided at the facility, or knowingly or intentionally charging 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.

SECTION 3. Amends Subchapter E, Chapter 254, Health and Safety Code, by adding Section 254.207, as follows:

Sec. 254.207. MANDATORY ENFORCEMENT. Requires the Health and Human Services Commission, notwithstanding any conflicting provision in Subchapter E (Enforcement and Penalties) and except for good cause shown, to impose the following on a person licensed under Chapter 254 (Freestanding Emergency Medical Care Facilities) who violates Section 254.160 or a rule adopted under that section:

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

(2) for the second violation, an administrative penalty in an amount equal to \$50,000, and a suspension of the person's license for 30 days; and

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

SECTION 4. Effective date: September 1, 2021.