

## **BILL ANALYSIS**

C.S.S.B. 2038  
By: Menéndez  
Public Health  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

During the height of the COVID-19 pandemic, many Texans went to freestanding emergency medical care facilities to receive COVID-19 testing, as these facilities advertised a quick turnaround time for results. Because these facilities are designed to treat patients experiencing medical emergencies, they are not required to treat patients who are clearly not experiencing an emergency. For that reason they have the ability to charge facility and physician fees that are exorbitantly high in comparison with other types of medical facilities. While administering COVID-19 tests, many of these facilities did so. In one example, a freestanding emergency medical care facility in Tarrant County billed more than \$15,000 for a COVID-19 test, including charges for facility fees, routine supplies, and physician fees, even though the billed charge for the test itself was only \$250. While the tests were provided at no direct cost to the consumer, there are concerns about the high prices facilities charged insurance companies for COVID-19 tests and the potential for those costs to eventually be passed along to consumers through higher insurance premiums. C.S.S.B. 2038 seeks to address this issue by prohibiting certain freestanding medical care facilities from charging unconscionable prices during a declared state of disaster and establishing administrative penalties for violations of that prohibition.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.S.B. 2038 amends the Health and Safety Code to require a licensed certain freestanding emergency medical care facilities that provide testing or vaccination for an infectious disease based on a state of disaster declared under the Texas Disaster Act of 1975 to disclose to each patient the price the facility charges for the test or vaccine and any facility fees, supply costs, and other costs associated with the test or vaccine in accordance with statutory requirements for the facility to provide to a patient a written disclosure statement regarding certain observation and facility fees and insurance network information. This requirement may not be construed as expanding the type of health care services a facility is authorized to provide.

C.S.S.B. 2038 makes this disclosure requirement and the prohibition regarding its interpretation applicable also to a freestanding emergency medical care facility that is associated with a licensed hospital that does not meet the conditions of participation for certification under federal law governing Medicare and is exempt from state licensing requirements for freestanding emergency medical care facilities based on its classification as one of the following:

- a licensed hospital;
- a facility located within or connected to a licensed hospital or a hospital owned and operated by the state; and
- a facility that is owned or operated by a licensed hospital or a hospital owned and operated by the state and meets one of the following conditions:
  - is surveyed as a service of the hospital by an organization that has been granted deeming authority as a national accreditation program for hospitals by the federal Centers for Medicare and Medicaid Services (CMS); or
  - is granted provider-based status by the CMS.

The bill excludes from the applicability of its provisions relating to exempt facilities a freestanding emergency medical care facility associated with a licensed hospital that has been operating as a hospital for less than one year, has submitted an application to a federally recognized accreditation program for certification under federal law governing Medicare, and has not failed an accreditation for certification.

C.S.S.B. 2038 prohibits a licensed facility or applicable exempt facility from engaging in the following pricing practices during a disaster declared by the governor under the Texas Disaster Act of 1975:

- 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.

That prohibition does not prohibit a facility from offering an uninsured individual a cash discount for a particular product or service or 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. The bill defines "unconscionable price" as 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 certain data collected by the Department of State Health Services.

C.S.S.B. 2038 requires the Health and Human Services Commission, except for good cause shown, to impose the following sanctions on a person licensed to operate a freestanding emergency medical facility or, with respect to an applicable exempt facility, a person licensed under the Texas Hospital Licensing Law for a violation of the bill's prohibition against certain pricing practices or a rule adopted in relation to that prohibition:

- for the first violation, an administrative penalty in an amount equal to \$10,000;
- 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
- for the third violation, a permanent revocation of the person's license.

**EFFECTIVE DATE**

September 1, 2021.

**COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE**

While C.S.S.B. 2038 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

Whereas the engrossed applied only to state-licensed freestanding emergency medical facilities, the substitute applies also to certain freestanding medical facilities that are exempt from state licensing requirements and are associated with certain licensed hospitals.

The substitute omits a prohibition from the engrossed against a facility charging an individual or a third-party payor a facility or observation fee for a health care service, including testing or vaccination, provided to an individual accessing the service from the individual's vehicle. The substitute instead requires a facility that provides testing or vaccination for an infectious disease based on a declared state of disaster to disclose the price the facility charges for the test or vaccine and any facility fees, supply costs, and other associated costs.

The substitute includes a provision not in the engrossed establishing that the prohibition against certain pricing practices during a declared state of disaster does not prohibit a facility from offering an uninsured individual a certain cash discount or accepting full payment directly from an individual in lieu of submitting a claim to the individual's health benefit plan.