



## Health Facility Compliance Guidance Letter

<b>Number:</b> GL 21-2009-A
<b>Title:</b> Prices and Fees Charged by Certain Freestanding Emergency Medical Care Facilities (SB 2038-87R) [Amended]
<b>Provider Types:</b> Freestanding Emergency Medical Care Facilities, General and Special Hospitals
<b>Date Issued:</b> November 16, 2022

### 1.0 Subject and Purpose

This amended guidance letter replaces the previous GL 21-2009, issued on February 3, 2022, to notify providers the Texas Health and Human Services Commission adopted rules in Texas Administrative Code Title 25 (25 TAC) Chapter 133 and 26 TAC Chapter 509 to implement [Senate Bill \(SB\) 2038](#), which are described in this guidance letter. These rules, which took effect November 10, 2022, were published in the November 4, 2022, issue of the *Texas Register* (47 TexReg 7422; 47 TexReg 7423). Refer to new [Section 2.5](#) below for more information about these rules.

HHSC provides guidance to licensed providers on legislation passed during the 87<sup>th</sup> Legislature, Regular Session (2021). SB 2038, relating to prices and fees charged by certain freestanding emergency medical care (FEMC) facilities, including prices and fees charged during a declared state of disaster; providing administrative penalties, took effect September 1, 2021.

This letter provides instruction to certain FEMC facilities on the passage of SB 2038 and outlines provider responsibilities and expectations.

### 2.0 Legislative Details & Provider Responsibilities

SB 2038 adds [Texas Health and Safety Code \(HSC\), Chapter 241, Subchapter I-1](#), and amends [Texas Health and Safety Code \(HSC\), Chapter 254, Subchapter D](#), which, during a declared state of disaster, require

certain FEMC facilities to disclose certain prices,<sup>1</sup> and prohibit them from charging unconscionable prices or charging a higher price to a third-party payor than for an individual for the same product or service.<sup>2</sup>

SB 2038 also prohibits these FEMC facilities from charging a facility or observation fee for health care services that individuals access from their vehicle, including testing or vaccination services.<sup>3</sup>

## 2.1 Applicability

SB 2038 applies to:

- an FEMC facility licensed under [HSC Chapter 254](#)<sup>4</sup>
- an FEMC facility that is associated with a hospital licensed under [HSC Chapter 241](#) that does not meet the conditions of participation for certification under [Title XVIII of the Social Security Act \(42 U.S.C. Section 1395 et seq.\)](#) that also is exempt from the licensing requirements of [HSC Chapter 254](#) under [§254.052](#) as:<sup>5</sup>
  - A licensed hospital;<sup>6</sup>
  - A facility that is located within or connected to a licensed hospital or a hospital owned and operated by this state;<sup>7</sup> or
  - A facility that is owned or operated by a licensed hospital or a hospital owned and operated by this state and that is:
    - determined to be a service of the hospital by a Centers for Medicare and Medicaid Services (CMS) authority; or
    - granted provider-based status by CMS.<sup>8</sup>

SB 2038 does not apply to an FEMC facility associated with a hospital licensed under [HSC Chapter 241](#) that:

- has been operating as a hospital for less than one year;

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<sup>1</sup> HSC §241.223 and HSC §254.1556.

<sup>2</sup> HSC §241.224 and HSC §254.160.

<sup>3</sup> HSC §241.222 and HSC §254.1555.

<sup>4</sup> HSC Chapter 254, Subchapter D.

<sup>5</sup> HSC §241.221(a).

<sup>6</sup> HSC §254.052(5).

<sup>7</sup> HSC §254.052(7).

<sup>8</sup> HSC §254.052(8).

- has submitted an application to a federally recognized accreditation program for certification under [Title XVIII of the Social Security Act \(42 U.S.C. Section 1395 et seq.\)](#); and
- has not failed an accreditation for certification.<sup>9</sup>

## 2.2 Price Disclosure Requirements

When a state of disaster for an infectious disease has been declared under [Government Code Chapter 418](#), SB 2038 requires FEMC facilities providing infectious disease testing or vaccination to disclose to each patient the following prices the facility charges:

- for the test or vaccine and
- any facility fees, supply costs, and other costs associated with the test or vaccine.<sup>10</sup>

## 2.3 Prohibited Fees and Pricing Practices

SB 2038 prohibits FEMC facilities from charging a facility or observation fee for health care services (including testing or vaccination services) that individuals access from their vehicle.<sup>3</sup>

SB 2038 defines an unconscionable price as a price that is more than 200 percent of the average price for the same or substantially similar product or service provided by health care facilities in the same county or nearest county to the FEMC facility to which SB 2038 applies.<sup>11</sup>

During a declared state of disaster, SB 2038 prohibits FEMC facilities 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 the facility charges an individual for the same product or service based on the payor's liability for payment or partial payment of the product or service.<sup>12</sup>

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<sup>9</sup> HSC §241.221(b).

<sup>10</sup> HSC §241.223(a) and HSC §254.1556(a).

<sup>11</sup> HSC §241.224(a) and HSC §254.160(a).

<sup>12</sup> HSC §241.224(b) and HSC §254.160(b).

SB 2038 does not prohibit an FEMC facility from:

- offering a cash discount to an uninsured individual for a particular product or service; or
- accepting a full payment directly from an individual for a health care product or service in lieu of submitting a claim to the individual's health benefit plan.<sup>13</sup>

## 2.4 Enforcement

SB 2038 authorizes HHSC to impose the following penalties for violating any [HSC §241.224](#) or [HSC §254.160](#) provision or HHSC rule adopted to implement those sections:

- an administrative penalty of \$10,000 for the first violation;
- an administrative penalty of \$50,000 and a 30-day license suspension for the second violation; and
- a permanent license revocation for the third violation.<sup>14</sup>

## 2.5 HHSC Rules Implementing SB 2038

To comply with SB 2038's provisions, HHSC adopted new rules at [25 TAC §133.52](#) and [26 TAC §509.69](#), which took effect November 10, 2022.

## 3.0 Background/History

As stated in the [author's and sponsor's statement of intent for SB 2038](#), many individuals who sought COVID-19 testing during the pandemic through an FEMC facility received bills for exorbitant prices consisting largely of facility and observation fees. SB 2038 seeks to provide additional protection against price gouging to consumers during a declared state of disaster by increasing requirements for price transparency, prohibiting unconscionable pricing, and prohibiting facility or observation fees for services individuals access from their vehicle.

## 4.0 Resources

View SB 2038 (87th Legislature, Regular Session, 2021) at: <https://capitol.texas.gov/tlodocs/87R/billtext/html/SB02038F.htm>.

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<sup>13</sup> HSC §241.224(c) and HSC §254.160(c).

<sup>14</sup> HSC §241.225 and HSC §254.207.

View SB 2038 Author's and Sponsor's Statement of Intent at:  
<https://capitol.texas.gov/tlodocs/87R/analysis/html/SB02038F.htm>.

View Government Code Chapter 418 at:  
<https://statutes.capitol.texas.gov/Docs/GV/htm/GV.418.htm>.

View Texas Health and Safety Code Chapter 241 at:  
<https://statutes.capitol.texas.gov/docs/HS/htm/HS.241.htm>.

View Texas Health and Safety Code Chapter 254 at:  
<https://statutes.capitol.texas.gov/docs/HS/htm/HS.254.htm>.

View Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) at: <https://www.govinfo.gov/content/pkg/USCODE-2020-title42/html/USCODE-2020-title42-chap7-subchapXVIII-sec1395.htm>.

View 25 TAC §133.52 at:  
[https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p\\_d ir=&p\\_rloc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=25&pt=1&ch=133&rl=52](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_d ir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=25&pt=1&ch=133&rl=52).

View 26 TAC §509.69 at:  
[https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p\\_d ir=&p\\_rloc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=26&pt=1&ch=509&rl=69](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_d ir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=26&pt=1&ch=509&rl=69).

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<https://service.govdelivery.com/accounts/TXHHSC/subscriber/new>.

## 5.0 Contact Information

If you have any questions about this letter, please contact the Policies and Rules Unit by email at: [HCR\\_PRU@hhs.texas.gov](mailto:HCR_PRU@hhs.texas.gov).