



The Honorable Cecile Young
Executive Commissioner
Texas Health and Human Services
Brown-Heatly Building
4900 N. Lamar Blvd.
Austin, TX 78751-2316

July 28, 2020

Commissioner Young,

First, I would like to thank you and your team for the tremendous work in leading our state's efforts to contain and mitigate COVID-19.

I am writing to request for the Texas Health and Human Services Commission (HHSC) to exercise their authority during this pandemic and issue a waiver or a rule change that will allow Chapter 254 Freestanding Emergency Medical Care facilities (FEMCs) the ability to provide non-emergent care during this public health crisis. FEMCs, with their emergency medical equipment and staff, are a valuable resource, capable of deflecting the non-emergency workload and relieving pressure on overburdened hospitals.

As it stands, due to HHSC interpretation of the regulations, FEMCs are prohibited from providing outpatient services. Freestanding emergency centers are licensed and regulated by the state, operate 24/7 with emergency room physicians on-site at all times, provide around-the-clock lab and advanced imaging services, and are subject to state EMTALA laws. Many FEMCs have respirators and isolation rooms and are currently assisting in caring for patient overflow from hospital emergency departments.

The waiver seeks to create a billing solution for COVID-19 tests and help reduce certain costs for non-emergent patients. As you are aware, the demand for COVID-19 testing is widespread and immediate in Texas. Our members are seeing thousands of patients a day who are in need of a COVID-19 test for a variety of reasons. While the actual COVID-19 test is required to be covered by insurance, the state regulations require anyone receiving treatment at a FEMC to be processed as an emergent patient. If HHSC allowed FEMCs to provide outpatient or non-emergent services, we could protect these responsible, proactive citizens in their efforts to protect themselves and others.

I also request you adjust to the current healthcare crisis by waiving certain unnecessary provisions when FEMCs hold patients for more than 23 hours. FEMCs throughout the state are part of Texas's Regional Advisory Councils' COVID-19 response plans, and as such, are being asked to hold patients at their facilities in order to keep them out of hospitals or potentially be discharged home. However, current regulations state that FEMCs must file an incident report form if they hold a patient over 23 hours. Allowing a patient to remain at an FEMC for longer

than 23 hours, without penalty or compliance concerns on the operator, would reduce hospital admissions, preserve hospital beds and keep non-COVID-19 patients out of hospitals where they might increase their chances of exposure.

I have included additional details on how HHSC could implement a rule change that would allow FEMCs to further assist during this public health crisis.

1. HHSC can modify “Freestanding emergency medical care facility” in the Health and Safety Code §254.001(5) and the corresponding rules at 25 TAC §131.2(12) to include “non-emergent services” or “outpatient services” or include language similar to the ASC rules which adds “other healthcare services.”

Non-emergent services and those healthcare claims would not include the technical components and would resemble billing often seen at other hospitals, outpatient facilities, physician offices and urgent care clinics. Any reimbursement disputes will already be subject to new SB 1264 and subsequent Texas Department of Insurance rules.

2. By releasing FEMCs from the reporting requirements (and any associated disciplinary actions) related to patients that stay at an FEMC for more than 23 hours as a result of COVID-19 pandemic, as set out in 25 TAC §131.61(a)(2) (reporting requirement for patients that stay longer than 23 hours) and 25 TAC §131.101 (enforcement actions for failure to comply with rules prohibiting non-emergency treatment).

Across the state of Texas alone, there are more than 185 freestanding emergency centers with 1,500 beds that stand ready to relieve the burden on hospitals and treat both COVID-19 and non-COVID-19 patients needing care. The FEMC presence throughout the state is equivalent to three large, 500-bed hospitals whose estimated \$1.5 billion of infrastructure can be turned on overnight without any capital expenditure by the government. FEMCs are located in rural, suburban and urban areas, and their small size limits potential COVID contagion between patients.

As COVID-19 cases continue to increase in Texas, all of the state's health care providers must be utilized to the fullest to treat patients and prevent the spread of COVID-19. We applaud the tremendous work you have already accomplished, and I am hopeful we can work together to fully utilize an existing and capable part of the Texas health care system that is eager to help combat this pandemic.

Sincerely,



Brad Shields
Executive Director
Texas Association of Freestanding Emergency Centers