

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 18-0609.01 Yelana Love x2295

HOUSE BILL 18-1212

HOUSE SPONSORSHIP

Kennedy and Landgraf,

SENATE SPONSORSHIP

(None),

House Committees

Health, Insurance, & Environment
Finance

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE LICENSING OF FREESTANDING EMERGENCY**
102 **DEPARTMENTS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill creates a new license, referred to as a "freestanding emergency department license", for the department of public health and environment (CDPHE) to issue on or after July 1, 2021, to a health facility that offers emergency care, that may offer primary and urgent care services, and that is either:

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

! Owned or operated by, or affiliated with, a hospital or hospital system and is located more than 250 yards from the main campus of the hospital; or

! Independent from and not operated by or affiliated with a hospital or hospital system and is not attached to or situated within 250 yards of, or contained within, a hospital.

The state board of health is to adopt rules regarding the new license, including rules to set licensure requirements and fees, safety and care standards, and staffing requirements.

A health facility with a freestanding emergency department license is limited in the amount of facility fees the facility can charge patients. CDPHE may fine or take action on the license of a freestanding emergency department that charges facility fees in violation of the limits established in the bill.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add 25-1.5-113** as
3 follows:

4 **25-1.5-113. Freestanding emergency departments - licensure**
5 **- requirements - rules - definitions.** (1) (a) ON OR AFTER DECEMBER 1,
6 2020, A PERSON THAT WISHES TO OPERATE A FREESTANDING EMERGENCY
7 DEPARTMENT MUST SUBMIT TO THE DEPARTMENT ON AN ANNUAL BASIS A
8 COMPLETED APPLICATION FOR LICENSURE ASA FREESTANDING EMERGENCY
9 DEPARTMENT. ON OR AFTER JULY 1, 2021, A PERSON SHALL NOT OPERATE
10 A FREESTANDING EMERGENCY DEPARTMENT WITHOUT A LICENSE ISSUED
11 BY THE DEPARTMENT. THE DEPARTMENT SHALL ISSUE A FREESTANDING
12 EMERGENCY DEPARTMENT LICENSE TO A HEALTH FACILITY TO OPERATE A
13 FREESTANDING EMERGENCY DEPARTMENT IF THE HEALTH FACILITY
14 SATISFIES THE REQUIREMENTS OF THIS SECTION AND BOARD RULES
15 ADOPTED IN ACCORDANCE WITH THIS SECTION.

16 (b) ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION, A HEALTH
17 FACILITY THAT IS OPERATING AS A LICENSED COMMUNITY CLINIC, AS

1 DESCRIBED IN SECTION 25-3-101 (2)(a)(I)(B), BUT MEETS THE DEFINITION
2 OF A FREESTANDING EMERGENCY DEPARTMENT AS DEFINED IN THIS
3 SECTION AND UNDER BOARD RULES MUST COMPLY WITH ALL
4 REQUIREMENTS OF THIS SECTION AND RULES ADOPTED UNDER THIS
5 SECTION AND OBTAIN A FREESTANDING EMERGENCY DEPARTMENT LICENSE
6 BY JULY 1, 2021, EXCEPT AS PROVIDED IN SUBSECTION (1)(b)(II) OF THIS
7 SECTION, IN ORDER TO CONTINUE OPERATING. ON AND AFTER JULY 1,
8 2021, A FACILITY SUBJECT TO THIS SUBSECTION (1)(b) SHALL NOT
9 OPERATE UNLESS THE FACILITY IS:

10 (I) LICENSED AS A FREESTANDING EMERGENCY DEPARTMENT; OR

11 (II) LICENSED AS A COMMUNITY CLINIC AS DESCRIBED IN SECTION
12 25-3-101 AND:

13 (A) IS OPERATING IN A RURAL AREA, AS DEFINED IN SECTION
14 39-30-103 (1.5); OR

15 (B) IS GRANTED A WAIVER BY THE DEPARTMENT IN ACCORDANCE
16 WITH SUBSECTION (2) OF THIS SECTION.

17 (2) THE DEPARTMENT MAY GRANT A WAIVER OF THE LICENSURE
18 REQUIREMENTS SET FORTH IN THIS SECTION AND IN RULES ADOPTED BY
19 THE BOARD FOR A COMMUNITY CLINIC SERVING AN UNDERSERVED
20 POPULATION IN THE STATE.

21 (3) (a) A FREESTANDING EMERGENCY DEPARTMENT LICENSED
22 PURSUANT TO THIS SECTION:

23 (I) SHALL NOT CHARGE A PATIENT A FACILITY FEE THAT EXCEEDS
24 THE COSTS REASONABLY RELATED TO THE OPERATING EXPENSES AT THE
25 FREESTANDING EMERGENCY DEPARTMENT WHERE TREATMENT WAS
26 PROVIDED; AND

27 (II) SHALL NOT CHARGE A PATIENT A FACILITY FEE IF THE PATIENT

1 WAS TRANSFERRED BY AMBULANCE TO ANOTHER FACILITY BECAUSE THE
2 FREESTANDING EMERGENCY DEPARTMENT WAS UNABLE TO STABILIZE THE
3 PATIENT.

4 (b) (I) BY JULY 1, 2021, AND BY EVERY JULY 1 THEREAFTER, A
5 FREESTANDING EMERGENCY DEPARTMENT SHALL SUBMIT A REPORT TO
6 THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING DETAILING
7 THE FACILITY FEES CHARGED DURING THE PRIOR YEAR AND THE
8 RELATIONSHIP BETWEEN THOSE FEES AND THE OVERHEAD COSTS AT THE
9 FACILITY WHERE THE TREATMENT WAS PROVIDED. IN DETERMINING THE
10 COST OF PROPERTY, A FREESTANDING EMERGENCY DEPARTMENT SHALL
11 DEPRECIATE ANY EXPENSE ON THE PROPERTY AS THE FREESTANDING
12 EMERGENCY DEPARTMENT WOULD FOR TAX PURPOSES.

13 (II) THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING
14 SHALL REVIEW THE ANNUAL REPORTS AND SUBMIT A REPORT TO THE
15 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT DETAILING ANY
16 FREESTANDING EMERGENCY DEPARTMENTS THAT HAVE CHARGED
17 FACILITY FEES IN VIOLATION OF SUBSECTION (3)(a) OF THIS SECTION.

18 (III) THE BOARD SHALL, BY RULE, ESTABLISH THE FINES THAT THE
19 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT MAY ASSESS AGAINST
20 ANY FREESTANDING EMERGENCY DEPARTMENT THAT THE DEPARTMENT OF
21 HEALTH CARE POLICY AND FINANCING REPORTS AS VIOLATING SUBSECTION
22 (3)(a) OF THIS SECTION. THE FINES MUST NOT EXCEED ONE THOUSAND
23 DOLLARS PER PATIENT OCCURRENCE. ANY PENALTY COLLECTED
24 PURSUANT TO THIS SECTION SHALL BE TRANSMITTED TO THE STATE
25 TREASURER FOR DEPOSIT INTO THE GENERAL FUND.

26 (4) (a) THE BOARD SHALL ADOPT RULES ESTABLISHING THE
27 REQUIREMENTS FOR LICENSURE OF, SAFETY AND CARE STANDARDS FOR,

1 AND FEES FOR LICENSING AND INSPECTING FREESTANDING EMERGENCY
2 DEPARTMENTS, WHICH FEES MUST BE SET IN ACCORDANCE WITH SECTION
3 25-3-105.

4 (b) THE RULES ADOPTED BY THE BOARD SHALL INCLUDE A
5 REQUIREMENT THAT ALL PATIENTS PRESENTING FOR EMERGENCY SERVICES
6 MUST RECEIVE A MEDICAL SCREENING. THE MEDICAL SCREENING SHALL
7 NOT BE DELAYED IN ORDER TO INQUIRE ABOUT THE INDIVIDUAL'S ABILITY
8 TO PAY OR INSURANCE STATUS.

9 (c) THE RULES ADOPTED BY THE BOARD MUST TAKE EFFECT BY
10 JULY 1, 2020, AND THEREAFTER, THE BOARD SHALL AMEND THE RULES AS
11 NECESSARY.

12 (5) THE DEPARTMENT SHALL NOT ISSUE A FREESTANDING
13 EMERGENCY DEPARTMENT LICENSE TO A HEALTH FACILITY THAT DOES NOT
14 SATISFY THE CRITERIA SPECIFIED IN THIS SECTION OR RULES ADOPTED BY
15 THE BOARD PURSUANT TO THIS SECTION.

16 (6) AS USED IN THIS SECTION:

17 (a) "BOARD" MEANS THE STATE BOARD OF HEALTH CREATED IN
18 SECTION 25-1-103.

19 (b) "FACILITY FEE" MEANS A FEE CHARGED OR BILLED BY A
20 FREESTANDING EMERGENCY DEPARTMENT FOR SERVICES PROVIDED IN THE
21 FACILITY, WHICH FEE IS:

22 (I) INTENDED TO COMPENSATE THE FREESTANDING EMERGENCY
23 DEPARTMENT FOR THE FACILITY'S OPERATING EXPENSES; AND

24 (II) SEPARATE AND DISTINCT FROM A PROFESSIONAL FEE AND
25 DIAGNOSTIC TESTING AND PROCEDURES FEES.

26 (c) "FREESTANDING EMERGENCY DEPARTMENT" MEANS A HEALTH
27 FACILITY THAT OFFERS EMERGENCY CARE, THAT MAY OFFER PRIMARY AND

1 URGENT CARE SERVICES, AND THAT IS EITHER:

2 (I) OWNED OR OPERATED BY, OR AFFILIATED WITH, A HOSPITAL OR
3 HOSPITAL SYSTEM AND IS LOCATED MORE THAN TWO HUNDRED FIFTY
4 YARDS FROM THE MAIN CAMPUS OF THE HOSPITAL; OR

5 (II) INDEPENDENT FROM AND NOT OPERATED BY OR AFFILIATED
6 WITH A HOSPITAL OR HOSPITAL SYSTEM AND IS NOT ATTACHED TO OR
7 SITUATED WITHIN TWO HUNDRED FIFTY YARDS OF, OR CONTAINED WITHIN,
8 A HOSPITAL.

9 **SECTION 2.** In Colorado Revised Statutes, 25-1.5-103, **amend**
10 (1)(a)(I)(A) and (2)(a.5)(II); and **add** (2)(a.5)(III) as follows:

11 **25-1.5-103. Health facilities - powers and duties of department**
12 **- limitations on rules promulgated by department - definitions.**

13 (1) The department has, in addition to all other powers and duties
14 imposed upon it by law, the powers and duties provided in this section as
15 follows:

16 (a) (I) (A) To annually license and to establish and enforce
17 standards for the operation of general hospitals, hospital units as defined
18 in section 25-3-101 (2), FREESTANDING EMERGENCY DEPARTMENTS AS
19 DEFINED IN SECTION 25-1.5-113, psychiatric hospitals, community clinics,
20 rehabilitation hospitals, convalescent centers, community mental health
21 centers, acute treatment units, facilities for persons with intellectual and
22 developmental disabilities, nursing care facilities, hospice care, assisted
23 living residences, dialysis treatment clinics, ambulatory surgical centers,
24 birthing centers, home care agencies, and other facilities of a like nature,
25 except those wholly owned and operated by any governmental unit or
26 agency.

27 (2) For purposes of this section, unless the context otherwise

1 requires:

2 (a.5) "Community clinic" has the same meaning as set forth in
3 section 25-3-101 and does not include:

4 (II) A rural health clinic, as defined in section 1861 (aa)(2) of the
5 federal "Social Security Act", 42 U.S.C. sec. 1395x (aa)(2); OR

6 (III) A FREESTANDING EMERGENCY DEPARTMENT AS DEFINED IN
7 AND LICENSED UNDER SECTION 25-1.5-113.

8 **SECTION 3.** In Colorado Revised Statutes, 25-3-101, **amend** (1)
9 and (2)(a)(III)(C); and **add** (2)(a)(III)(D) as follows:

10 **25-3-101. Hospitals - health facilities - licensed - definitions.**

11 (1) It is unlawful for any person, partnership, association, or corporation
12 to open, conduct, or maintain any general hospital, hospital unit,
13 FREESTANDING EMERGENCY DEPARTMENT AS DEFINED IN SECTION
14 25-1.5-113, psychiatric hospital, community clinic, rehabilitation hospital,
15 convalescent center, community mental health center, acute treatment
16 unit, facility for persons with developmental disabilities, as defined in
17 section 25-1.5-103 (2)(c), nursing care facility, hospice care, assisted
18 living residence, except an assisted living residence shall be assessed a
19 license fee as set forth in section 25-27-107, dialysis treatment clinic,
20 ambulatory surgical center, birthing center, home care agency, or other
21 facility of a like nature, except those wholly owned and operated by any
22 governmental unit or agency, without first having obtained a license from
23 the department of public health and environment.

24 (2) As used in this section, unless the context otherwise requires:

25 (a) (III) "Community clinic" does not include:

26 (C) A facility that functions only as an office for the practice of
27 medicine or the delivery of primary care services by other licensed or

1 certified practitioners; OR

2 (D) A FREESTANDING EMERGENCY DEPARTMENT LICENSED UNDER
3 SECTION 25-1.5-113.

4 **SECTION 4. Act subject to petition - effective date.** Sections
5 2 and 3 of this act take effect July 1, 2020, and the remainder of this act
6 takes effect at 12:01 a.m. on the day following the expiration of the
7 ninety-day period after final adjournment of the general assembly (August
8 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
9 referendum petition is filed pursuant to section 1 (3) of article V of the
10 state constitution against this act or an item, section, or part of this act
11 within such period, then the act, item, section, or part will not take effect
12 unless approved by the people at the general election to be held in
13 November 2018 and, in such case, will take effect on the date of the
14 official declaration of the vote thereon by the governor; except that
15 sections 2 and 3 of this act take effect July 1, 2020.