

CHAPTER 157

HEALTH AND ENVIRONMENT

SENATE BILL 18-146

BY SENATOR(S) Kefalas and Smallwood, Martinez Humenik, Aguilar, Coram, Crowder, Donovan, Garcia, Gardner, Jahn, Moreno, Tate, Todd, Williams A., Guzman, Jones, Kagan, Kerr, Lambert, Lundberg, Merrifield, Neville T.; also REPRESENTATIVE(S) Sias and Singer, Hansen, Kennedy, Arndt, Becker K., Bridges, Buckner, Coleman, Esgar, Exum, Garnett, Ginal, Hamner, Herod, Hooton, Lee, Lontine, Melton, Michaelson Jenet, Pettersen, Roberts, Rosenthal, Saine, Valdez, Weissman, Winter, Young, Duran.

AN ACT

CONCERNING A REQUIREMENT THAT A FREESTANDING EMERGENCY DEPARTMENT INFORM A PERSON WHO IS SEEKING MEDICAL TREATMENT ABOUT THE HEALTH CARE OPTIONS THAT ARE AVAILABLE TO THE PERSON, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Colorado struggles to control the cost of health care, which is consistent with national trends;

(b) The cost of health care benefits, including health insurance policies and monthly premiums, is directly related to the costs of health care services, products, and medications used by Colorado residents to maintain their health, whether addressing acute health needs or managing chronic health conditions;

(c) The costs of receiving health care services for treating a specific condition vary significantly based on the setting or facility at which the health care services are delivered to the patient;

(d) Emergency departments, including freestanding emergency departments, which are often referred to as "FSEDs", have been widely recognized as the most expensive setting for receiving nonemergency health care services, and evidence shows that utilization of FSEDs for nonemergency health care services significantly drives up health care costs for Colorado residents;

Capital letters or bold & italic numbers indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(e) Data from the all payer claims database indicate that seven of the top ten reasons for visiting a FSED were for nonemergency services;

(f) FSEDs have proliferated, primarily along the Front Range, with thirty-seven FSEDs in operation in 2016, and Colorado is one of the top three states in terms of the number of FSEDs operating in the state;

(g) Colorado health care providers, facilities, and insurers have a shared responsibility to inform and educate Colorado health care consumers regarding their health care options and costs associated with those options so that consumers can make informed health care decisions regarding where they choose to receive their health care, what the costs will be, and the costs for which they will be responsible;

(h) While initially introduced in Colorado as facilities necessary to address critical health care coverage gaps existing across diverse geographic regions, particularly rural regions, FSEDs are increasingly located in more suburban and urban areas with adequate access to health care facilities;

(i) Significant differences also exist in terms of the costs patients incur for receiving nonemergency health care services at FSEDs compared to receiving similar care at urgent care centers or a primary care physician's office;

(j) FSED facility fees significantly increase patients' costs compared to costs associated with receiving nonemergency care at an urgent care center or primary care physician's office;

(k) The price of hospital facility fees rose eighty-nine percent between 2009 and 2015, twice as much as the price of outpatient health care and four times as much as overall health care spending; and

(l) The intent of this bill is to:

(I) Require transparency and disclosure to consumers by FSEDs or off-campus emergency departments for the purpose of helping health care consumers make informed decisions; and

(II) Authorize the Colorado department of public health and environment to oversee and enforce a comprehensive set of consumer protections through the implementation of transparency and disclosure measures.

SECTION 2. In Colorado Revised Statutes, **add** 25-3-119 as follows:

25-3-119. Freestanding emergency departments - required notices - disclosures - rules - definitions. (1) (a) (I) A FREESTANDING EMERGENCY DEPARTMENT SHALL GIVE TO EVERY INDIVIDUAL SEEKING TREATMENT AT THE FACILITY A WRITTEN NOTICE CONTAINING THE FOLLOWING STATEMENTS IMMEDIATELY UPON REGISTRATION:

PATIENT INFORMATION

THIS IS AN EMERGENCY MEDICAL FACILITY THAT TREATS EMERGENCY MEDICAL CONDITIONS.

WE WILL SCREEN AND TREAT YOU REGARDLESS OF YOUR ABILITY TO PAY.

YOU HAVE A RIGHT TO ASK QUESTIONS REGARDING YOUR TREATMENT OPTIONS AND COSTS.

YOU HAVE A RIGHT TO RECEIVE PROMPT AND REASONABLE RESPONSES TO QUESTIONS AND REQUESTS.

YOU HAVE A RIGHT TO REJECT TREATMENT.

HOWEVER, WE ENCOURAGE YOU TO DEFER YOUR QUESTIONS UNTIL AFTER WE SCREEN YOU FOR AN EMERGENCY MEDICAL CONDITION.

THIS IS NOT A COMPLETE STATEMENT OF PATIENT INFORMATION OR RIGHTS. YOU WILL RECEIVE A MORE COMPREHENSIVE STATEMENT OF PATIENT'S RIGHTS UPON THE COMPLETION OF A MEDICAL SCREENING EXAMINATION THAT DOES NOT REVEAL AN EMERGENCY MEDICAL CONDITION OR AFTER TREATMENT HAS BEEN PROVIDED TO STABILIZE AN EMERGENCY MEDICAL CONDITION.

(II) (A) IF THE FREESTANDING EMERGENCY DEPARTMENT DOES NOT HAVE OR INCLUDE WITHIN ITS FACILITY AN URGENT CARE CENTER OR CLINIC, THE FREESTANDING EMERGENCY DEPARTMENT SHALL INCLUDE THE FOLLOWING STATEMENT IN THE NOTICE REQUIRED BY SUBSECTION (1)(a)(I) OF THIS SECTION, IMMEDIATELY FOLLOWING THE SENTENCE THAT READS "THIS IS AN EMERGENCY MEDICAL FACILITY THAT TREATS EMERGENCY MEDICAL CONDITIONS.":

THIS IS NOT AN URGENT CARE CENTER OR PRIMARY CARE PROVIDER.

(B) IF THE FREESTANDING EMERGENCY DEPARTMENT HAS OR INCLUDES WITHIN ITS FACILITY AN URGENT CARE CENTER OR CLINIC, THE FREESTANDING EMERGENCY DEPARTMENT SHALL INCLUDE THE FOLLOWING STATEMENT IN THE NOTICE REQUIRED BY SUBSECTION (1)(a)(I) OF THIS SECTION, IMMEDIATELY FOLLOWING THE SENTENCE THAT READS "THIS IS AN EMERGENCY MEDICAL FACILITY THAT TREATS EMERGENCY MEDICAL CONDITIONS.":

THIS FACILITY ALSO CONTAINS AN URGENT CARE CENTER THAT OPERATES FROM (INSERT TIME URGENT CARE CENTER OPENS) TO (INSERT TIME URGENT CARE CENTER CLOSES) AND PROVIDES PRIMARY CARE SERVICES (AND INSERT, IF APPLICABLE, THAT THE URGENT CARE CENTER OFFERS PRIMARY CARE SERVICES BY APPOINTMENT).

(III) IF THE INDIVIDUAL SEEKING TREATMENT IS A MINOR WHO IS ACCOMPANIED BY AN ADULT, THE FREESTANDING EMERGENCY DEPARTMENT SHALL PROVIDE THE WRITTEN NOTICE REQUIRED BY THIS SUBSECTION (1)(a) TO THE ACCOMPANYING ADULT.

(b) IN ADDITION TO GIVING AN INDIVIDUAL THE WRITTEN NOTICE REQUIRED BY SUBSECTION (1)(a) OF THIS SECTION, A FREESTANDING EMERGENCY DEPARTMENT STAFF MEMBER OR HEALTH CARE PROVIDER SHALL PROVIDE THE INFORMATION SPECIFIED IN SUBSECTION (1)(a) OF THIS SECTION TO THE INDIVIDUAL ORALLY.

(c) AS NECESSARY, THE STATE BOARD OF HEALTH, BY RULE, MAY UPDATE THE INFORMATION REQUIRED TO BE INCLUDED IN THE WRITTEN NOTICE OF PATIENT INFORMATION SET FORTH IN THIS SUBSECTION (1).

(2) (a) A FREESTANDING EMERGENCY DEPARTMENT SHALL POST A SIGN THAT IS PLAINLY VISIBLE IN THE AREA WITHIN THE FACILITY WHERE AN INDIVIDUAL SEEKING CARE REGISTERS OR CHECKS IN AND THAT STATES:

THIS IS AN EMERGENCY MEDICAL FACILITY THAT TREATS EMERGENCY MEDICAL CONDITIONS.

(b) (I) IF THE FREESTANDING EMERGENCY DEPARTMENT DOES NOT HAVE OR INCLUDE WITHIN ITS FACILITY AN URGENT CARE CENTER OR CLINIC, THE FREESTANDING EMERGENCY DEPARTMENT SHALL INCLUDE THE FOLLOWING STATEMENT ON THE SIGN REQUIRED BY THIS SUBSECTION (2), IMMEDIATELY FOLLOWING THE STATEMENT SPECIFIED IN SUBSECTION (2)(a) OF THIS SECTION:

THIS IS NOT AN URGENT CARE CENTER OR PRIMARY CARE PROVIDER.

(II) IF THE FREESTANDING EMERGENCY DEPARTMENT HAS OR INCLUDES WITHIN ITS FACILITY AN URGENT CARE CENTER OR CLINIC, THE FREESTANDING EMERGENCY DEPARTMENT SHALL INCLUDE THE FOLLOWING STATEMENT ON THE SIGN REQUIRED BY THIS SUBSECTION (2), IMMEDIATELY FOLLOWING THE STATEMENT SPECIFIED IN SUBSECTION (2)(a) OF THIS SECTION:

THIS FACILITY ALSO CONTAINS AN URGENT CARE CENTER THAT OPERATES FROM (INSERT TIME URGENT CARE CENTER OPENS) TO (INSERT TIME URGENT CARE CENTER CLOSSES) AND PROVIDES PRIMARY CARE SERVICES (AND INSERT, IF APPLICABLE, THAT THE URGENT CARE CENTER OFFERS PRIMARY CARE SERVICES BY APPOINTMENT).

(3) (a) AFTER PERFORMING AN APPROPRIATE MEDICAL SCREENING EXAMINATION AND DETERMINING THAT A PATIENT DOES NOT HAVE AN EMERGENCY MEDICAL CONDITION OR AFTER TREATMENT HAS BEEN PROVIDED TO STABILIZE AN EMERGENCY MEDICAL CONDITION, THE FREESTANDING EMERGENCY DEPARTMENT SHALL PROVIDE TO THE PATIENT A WRITTEN DISCLOSURE THAT:

(I) SPECIFIES WHETHER THE FREESTANDING EMERGENCY DEPARTMENT ACCEPTS PATIENTS WHO ARE ENROLLED IN: THE STATE MEDICAL ASSISTANCE PROGRAM UNDER ARTICLES 4, 5, AND 6 OF TITLE 25.5; MEDICARE, AS AUTHORIZED IN TITLE XVIII OF THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED; THE CHILDREN'S BASIC HEALTH PLAN ESTABLISHED UNDER ARTICLE 8 OF TITLE 25.5; OR A HEALTH PLAN AUTHORIZED UNDER 10 U.S.C. SEC. 1071 ET SEQ.;

(II) LISTS THE SPECIFIC HEALTH INSURANCE PROVIDER NETWORKS AND CARRIERS WITH WHICH THE FREESTANDING EMERGENCY DEPARTMENT PARTICIPATES OR STATES

THAT THE FREESTANDING EMERGENCY DEPARTMENT IS NOT A PARTICIPATING PROVIDER IN ANY HEALTH INSURANCE PROVIDER NETWORKS;

(III) STATES THAT THE FREESTANDING EMERGENCY DEPARTMENT OR A PHYSICIAN PROVIDING HEALTH CARE SERVICES AT THE FREESTANDING EMERGENCY DEPARTMENT MAY NOT BE A PARTICIPATING PROVIDER IN THE PATIENT'S HEALTH INSURANCE PROVIDER NETWORK;

(IV) STATES THAT A PHYSICIAN PROVIDING HEALTH CARE SERVICES AT THE FREESTANDING EMERGENCY DEPARTMENT MAY BILL SEPARATELY FROM THE FREESTANDING EMERGENCY DEPARTMENT FOR THE HEALTH CARE SERVICES PROVIDED TO THE PATIENT;

(V) SPECIFIES THE CHARGEMASTER OR FEE SCHEDULE PRICE FOR THE TWENTY-FIVE MOST COMMON HEALTH CARE SERVICES PROVIDED BY THE FREESTANDING EMERGENCY DEPARTMENT;

(VI) CONTAINS A STATEMENT SPECIFYING THAT THE PRICE LISTED ON THE FREESTANDING EMERGENCY DEPARTMENT'S CHARGEMASTER OR FEE SCHEDULE FOR ANY GIVEN HEALTH CARE SERVICE IS THE MAXIMUM CHARGE THAT ANY PATIENT WILL BE BILLED FOR THE SERVICE AND THAT THE ACTUAL CHARGE FOR ANY HEALTH CARE SERVICE RENDERED MAY BE LOWER DEPENDING ON APPLICABLE HEALTH INSURANCE BENEFITS AND THE AVAILABILITY OF DISCOUNTS OR FINANCIAL ASSISTANCE;

(VII) CONTAINS THE FOLLOWING STATEMENT OR A STATEMENT CONTAINING SUBSTANTIALLY SIMILAR INFORMATION:

IF YOU ARE COVERED BY HEALTH INSURANCE, YOU ARE STRONGLY ENCOURAGED TO CONSULT WITH YOUR HEALTH INSURER TO DETERMINE ACCURATE INFORMATION ABOUT YOUR FINANCIAL RESPONSIBILITY FOR A PARTICULAR HEALTH CARE SERVICE PROVIDED AT THIS FREESTANDING EMERGENCY DEPARTMENT. IF YOU ARE NOT COVERED BY HEALTH INSURANCE, YOU ARE STRONGLY ENCOURAGED TO CONTACT (INSERT NAME AND TELEPHONE NUMBER FOR OFFICE RESPONSIBLE FOR FINANCIAL SERVICES) TO DISCUSS PAYMENT OPTIONS AND THE AVAILABILITY OF FINANCIAL ASSISTANCE PRIOR TO RECEIVING A HEALTH CARE SERVICE FROM THIS FREESTANDING EMERGENCY DEPARTMENT.

(VIII) CONTAINS INFORMATION ABOUT THE FACILITY FEES THAT THE FREESTANDING EMERGENCY DEPARTMENT CHARGES, INDICATING EITHER THE MAXIMUM FACILITY FEE THAT THE FREESTANDING EMERGENCY DEPARTMENT CHARGES OR THE RANGE OF THE MINIMUM TO MAXIMUM AMOUNT OF THE FACILITY FEES THAT THE FREESTANDING EMERGENCY DEPARTMENT CHARGES; AND

(IX) INCLUDES THE FREESTANDING EMERGENCY DEPARTMENT'S WEBSITE ADDRESS WHERE THE INFORMATION CONTAINED IN THE DISCLOSURE REQUIRED BY THIS SUBSECTION (3) MAY BE FOUND.

(b) A FREESTANDING EMERGENCY DEPARTMENT SHALL UPDATE THE INFORMATION CONTAINED IN THE WRITTEN DISCLOSURE REQUIRED BY THIS SUBSECTION (3) AT

LEAST ONCE EVERY SIX MONTHS.

(c) RECEIPT OF THE DISCLOSURE UNDER THIS SUBSECTION (3) DOES NOT WAIVE A COVERED PERSON'S PROTECTIONS UNDER SECTION 10-16-704 (3)(b).

(4) A FREESTANDING EMERGENCY DEPARTMENT SHALL POST THE DISCLOSURE REQUIRED BY SUBSECTION (3) OF THIS SECTION ON ITS WEBSITE AND UPDATE THE DISCLOSURE POSTED ON ITS WEBSITE AT LEAST ONCE EVERY SIX MONTHS.

(5) A FREESTANDING EMERGENCY DEPARTMENT SHALL PROVIDE THE INFORMATION REQUIRED BY THIS SECTION IN A CLEAR AND UNDERSTANDABLE MANNER AND IN LANGUAGES APPROPRIATE TO THE COMMUNITIES AND PATIENTS THE FREESTANDING EMERGENCY DEPARTMENT SERVES.

(6) NOTHING IN THIS SECTION AFFECTS OR OTHERWISE LIMITS A HOSPITAL'S OR OTHER HEALTH FACILITY'S OBLIGATIONS UNDER SECTION 6-20-101 OR ARTICLE 49 OF THIS TITLE 25.

(7) THE STATE BOARD OF HEALTH MAY ADOPT RULES AS NECESSARY TO IMPLEMENT AND ENFORCE THIS SECTION, INCLUDING RULES NECESSARY TO ENSURE THAT FREESTANDING EMERGENCY DEPARTMENTS ARE COMPLYING IN GOOD FAITH WITH THE INTENT OF THIS SECTION AND THE TRANSPARENCY AND DISCLOSURE REQUIREMENTS OF THIS SECTION.

(8) AS USED IN THIS SECTION:

(a) "CHARGEMASTER OR FEE SCHEDULE", WHICH IS OFTEN REFERRED TO AS "CHARGE DESCRIPTION MASTER" OR "CDM", MEANS A UNIFORM SCHEDULE OF CHARGES REPRESENTED BY A HEALTH FACILITY AS THE FACILITY'S GROSS BILLED CHARGE, OR MAXIMUM CHARGE THAT ANY PATIENT WILL BE BILLED, FOR A GIVEN HEALTH CARE SERVICE, REGARDLESS OF PAYER AND BEFORE ANY DISCOUNTS OR NEGOTIATIONS ARE APPLIED.

(b) "EMERGENCY MEDICAL CONDITION" HAS THE SAME MEANING AS SET FORTH IN 42 U.S.C. SEC. 1395dd (e)(1).

(c) (I) "FREESTANDING EMERGENCY DEPARTMENT" MEANS A HEALTH FACILITY THAT OFFERS EMERGENCY CARE, THAT MAY OFFER PRIMARY AND URGENT CARE SERVICES, THAT IS LICENSED BY THE DEPARTMENT PURSUANT TO SECTION 25-1.5-103, AND THAT IS EITHER:

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

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

(II) "FREESTANDING EMERGENCY DEPARTMENT" DOES NOT INCLUDE A HEALTH FACILITY DESCRIBED IN SUBSECTION (8)(c)(I) OF THIS SECTION THAT WAS LICENSED

BY THE DEPARTMENT PURSUANT TO SECTION 25-1.5-103 AS A COMMUNITY CLINIC PRIOR TO JULY 1, 2010, IF THE FACILITY IS SERVING A RURAL COMMUNITY OR A SKI AREA, AS DEFINED IN STATE BOARD RULES.

SECTION 3. Appropriation. For the 2018-19 state fiscal year, \$34,725 is appropriated to the department of public health and environment for use by the health facilities and emergency medical services division. This appropriation is from the health facilities general licensure cash fund created in section 25-3-103.1 (1), C.R.S., and is based on an assumption that the division will require an additional 0.5 FTE. To implement this act, the division may use this appropriation for administration and operations.

SECTION 4. Act subject to petition - effective date. This act takes effect January 1, 2019; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on January 1, 2019, or on the date of the official declaration of the vote thereon by the governor, whichever is later.

Approved: April 25, 2018